

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

08 CR 76

-against-

United States Courthouse

: Brooklyn, New York

CHARLES CARNEGLIA,

Defendant.

: March 2, 2009  
9:00 o'clock a.m.

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TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JACK B. WEINSTEIN  
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Plaintiff:

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United States Attorney  
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For the Defendant:

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Proceedings recorded by mechanical stenography, transcript  
produced by CAT.

1 (In open court.)

2 THE COURTROOM CLERK: All rise.

3 THE COURT: Good morning.

4 ALL: Good morning.

5 THE COURT: Call the case.

6 (Pause in the proceedings.)

7

8 MR. FARBER: I did speak to the defendant personally  
9 this morning. At 6:00 o'clock this morning he informed me  
10 they were about to put him on the bus. I just wanted to  
11 confirm that court was going to be in session. I confirmed  
12 that it was and he was getting on the bus.

13 THE COURT: The matters we're going to talk about  
14 now are strictly matters of law.

15 Court Exhibit 1 is the new jury charge. Exhibit 1  
16 of 3/2/09, which was distributed to the parties after our  
17 conference last week.

18 Court Exhibit 2 is the Government letter of  
19 March 1st, dealing with hearsay.

20 Court Exhibit 3 is the new witness list of the  
21 defendant.

22 Court Exhibit 4 is a reargument of the Government on  
23 the issue of withdrawal.

24 MS. SHARKEY: We don't have any documents. We don't  
25 have Court Exhibit 4.

1 MR. BURLINGAME: We sent it around yesterday.

2 THE COURT: All right. I'll deal with it when we  
3 get to it.

4 Now, on the charge, I have some suggested changes on  
5 pages 34, 35 and 36. Turn to that, please.

6 (Pause in the proceedings.)

7

8 MS. SHARKEY: Judge, I'm sorry, we don't have the  
9 charge with us.

10 THE COURTROOM CLERK: I don't have that with me.

11 THE COURT: You don't have an extra copy?

12 THE COURTROOM CLERK: No.

13 THE COURT: Well, you had better go up and get it.

14 MS. SHARKEY: Sorry.

15 THE COURT: While we're getting that charge, I'll  
16 discuss with you Court Exhibits 4 and 2.

17 Court Exhibit 4 relates to the charge. The  
18 Government reiterates its contention about the misleading  
19 nature of the charge. The Court approved --

20 MS. SHARKEY: Judge, if you're going.

21 THE COURT: -- on the ground that he had to  
22 affirmatively establish withdrawal.

23 It's rejected. I'm not reconsidering that point.

24 MS. SHARKEY: Okay.

25 MR. BURLINGAME: Judge, it wasn't actually, it was

1 just some suggested new language.

2 THE COURT: I'm not going to change it. It's been  
3 thoroughly compromised and worked over and I'm not re-doing  
4 it.

5 Now, with respect to Court Exhibit 2, the hearsay  
6 problem. We'll take them up one at a time. I'll hear  
7 argument first from the Government and then, from the  
8 defendant, and then rule.

9 MR. BURLINGAME: I think that the Government's  
10 position is basically just sort of a prophylactic one  
11 reminding the Court that the defendant cannot put on -- he  
12 cannot avoid testifying and put on hearsay statements through  
13 his witnesses either through the co-conspirator statement rule  
14 or through the admissions against penal interest.

15 I don't think there's really too much to be argued  
16 on the point. It's not controversial. It's just more to  
17 raise the issue in advance to remind defense counsel of, you  
18 know, just to raise the issue in advance.

19 MS. SHARKEY: Judge, can I have one minute? I have  
20 notes on this and I'm a little scattered.

21 THE COURT: All right. Pull yourself together and  
22 then I'll hear your argument.

23 (Pause in the proceedings.)  
24

25 MS. SHARKEY: Judge? Oh, I'm sorry.

1 (Pause in the proceedings.)

2

3 THE COURT: Yes?

4 MS. SHARKEY: Without a specific challenge to  
5 certain evidence, it's difficult for me to address this, but I  
6 can address it in a larger context.

7 I'm wondering if the prosecution is making this  
8 argument concerning the introduction of taped statements by  
9 Mr. Carneglia. I believe one of the witnesses this morning,  
10 if we go forward, is putting in jail calls of the defendant.  
11 The Court indicated on Thursday that we would also be allowed  
12 to introduce jail calls contemporaneously through the  
13 Government's witness to contextualize the statements.

14 THE COURT: Only for purposes of completeness.

15 MS. SHARKEY: Okay.

16 THE COURT: But not if it doesn't throw light on the  
17 Government's excerpts.

18 MR. BURLINGAME: Correct and --

19 MS. SHARKEY: And if I could finish, Mr. Burlingame?

20 MR. BURLINGAME: Yes.

21 MS. SHARKEY: A number of the transcripts that the  
22 Government has provided to Counsel and the Court, and intends  
23 to play through the witness, are excerpts of conversations.

24 What the defense has done on a number of those  
25 transcripts is transcribe the entire call.

1 THE COURT: Well, take it up with the Government.  
2 If there's any controversy about it, I'll have to decide.

3 I can't handle this in context. You have my general  
4 position.

5 MS. SHARKEY: Right. You just asked me about this,  
6 Judge. I was going to say, we have full transcripts.

7 THE COURT: Show them to the Government.

8 MS. SHARKEY: Okay.

9 THE COURT: The Government will play what you want  
10 played, unless it's a controversial issue, in which case I  
11 would decide it.

12 I cannot do anything further at this time. You have  
13 my general view.

14 MS. SHARKEY: All right. So, you do know, we have  
15 two additional calls that we think should be included to  
16 contextualize the statements. I'll show them to the  
17 Government if we can have a break and do it.

18 THE COURT: Show it to the Government. If the  
19 Government objects, I'll have to decide.

20 MS. SHARKEY: Okay.

21 THE COURT: In general, you can't use his admissions  
22 in favor of the defendant. It is a one-way street.

23 MS. SHARKEY: And as far as the hearsay statements  
24 from witnesses, Mr. Burlingame has indicated that the letter  
25 filed last night was a prophylactic letter.

1 I would note that depending on the reason for any  
2 purported statements is what should guide the Court, and I  
3 would note that under Federal rule of evidence 801(c) where a  
4 statement is offered as circumstantial evidence of the  
5 declarant's state of mind rather than for the truth of the  
6 matter asserted, it's not hearsay.

7 Similarly, under Rule 803, Subsection 3, the state  
8 of mind exception to the hearsay rules allows into evidence,  
9 quote: "A statement of the declarant's then-existing state of  
10 mind, but not including a statement of memory or belief. A  
11 determination of whether a statement falls within the state of  
12 mind exception requires a predicate finding as to whether the  
13 statement then relates to an existing state of mind or to a  
14 past memory or belief offered to prove the fact remembered or  
15 believed. It is well established that statements offered for  
16 their effect on the listener are nonhearsay."

17 Certainly, we believe that any testimony elicited  
18 from witnesses proffered by the defense on the issue of  
19 withdrawal statements will fall within any of these  
20 evidentiary rules. We understand the nature of hearsay.  
21 We're not offering anything as a co-conspirator --

22 THE COURT: I cannot decide these specific issues  
23 without seeing the exact statement you're relying upon.

24 The general principle you state is accurate, but how  
25 it applies -- whether 403 applies, whether it is used for more

1 than one purpose and what rules should be applied to the  
2 specific statement -- depends on that statement and its  
3 context. So, when you want to introduce anything, if the  
4 Government is objecting, I would like to rule on it in advance  
5 while we're waiting for jurors. That's why we're here at  
6 9:00 o'clock.

7 Do you have what you are going to show?

8 MS. SHARKEY: Judge, the witness's testimony is what  
9 we're going to show. I can share it. What I anticipate it to  
10 be at this point --

11 THE COURT: You have to indicate what the witness is  
12 going to say; otherwise, I can't rule on it. And I am not  
13 going to take a series of sidebars every few minutes while  
14 there is objection to what the witness is saying.

15 MS. SHARKEY: Okay.

16 THE COURT: So, you might as well sit down with the  
17 Government and reveal what it is you're going to use the  
18 witnesses for.

19 MS. SHARKEY: I'm happy to do that right now. Right  
20 here.

21 THE COURT: Very good. Do it right now with either  
22 with the Government and not the Court first, or with the Court  
23 and the Government. However you wish.

24 MS. SHARKEY: All right, Judge.

25 The defense, if we go forward -- I don't know if we



1 have jurors today, I don't know what the story is -- intends  
2 to call three witnesses. One is our investigator, Mr. Dwyer  
3 who has been noticed. This does not implicate Mr. Dwyer.

4 The witness where it might be implicated --

5 THE COURT: Who is the witness?

6 MS. SHARKEY: Mark Goia -- G-0-I-A.

7 THE COURT: And who is he?

8 MS. SHARKEY: He is a friend of Mr. Carneglia's.

9 THE COURT: A member or associate?

10 MS. SHARKEY: No.

11 THE COURT: Okay. And what is he going to say?

12 MS. SHARKEY: Mr. Goia would testify, amongst other  
13 things, that prior to Mr. Carneglia going to jail in October  
14 of 2001, he told Mr. Goia, I'm done with this life, I am  
15 finished with this -- I'm paraphrasing -- and he communicated  
16 to him in the present tense that he was no longer affiliating  
17 himself with organized crime.

18 THE COURT: To show state of mind.

19 MS. SHARKEY: Yes.

20 THE COURT: State of mind is not sufficient.

21 MS. SHARKEY: Well, why not, Judge? Respectfully --

22 THE COURT: Because it requires affirmative acts.

23 MS. SHARKEY: Well, those are also. It not only  
24 requires affirmative acts but as you know, that the defense of  
25 withdrawal requires communicating this to fellow individuals.

1 Or that's part of it, part of what the jury could consider.

2 THE COURT: You just told me this witness is not a  
3 member of the conspiracy.

4 MS. SHARKEY: No, Judge, but he is a member --  
5 member's a wrong word -- he is a member of the community. He  
6 is an individual who lives in the community in and around  
7 where individuals congregate. So, that's the --

8 THE COURT: Okay. Let's hear what the Government  
9 has to say.

10 MR. BURLINGAME: Judge, I think it's clearly hearsay  
11 for the reasons Your Honor identified.

12 It doesn't go to his state of mind. It's a  
13 self-serving statement the defendant's free to make if he  
14 takes the stand. He is simply trying to get hearsay  
15 statements --

16 THE COURT: Well, he can't make it if he takes the  
17 stand because it was made years ago --

18 MR. BURLINGAME: We can't discuss that --

19 THE COURT: -- and the importance of it is the  
20 contemporaneous nature of the statement, which he cannot  
21 duplicate on the stand.

22 MR. BURLINGAME: But there's the, but I don't think  
23 any of the -- I'd like a second to review the rule, but I  
24 don't think any of the indicia of reliability that underlie  
25 the presence of suppression rule are present here.

1 Plus, the fact that he's talking to simply a member  
2 of the community doesn't have any, as Your Honor pointed out,  
3 he's not taking this, the statement would have some meaning if  
4 it was --

5 THE COURT: The statement is used to show, at the  
6 least, present state of mind to show contemporaneous acts.

7 MR. BURLINGAME: Right.

8 THE COURT: If he has the -- yes?

9 MR. BURLINGAME: A statement made while describing  
10 an event or condition made while the declarant is perceiving  
11 the event or condition.

12 THE COURT: That's not the situation.

13 He's stating not what he's perceiving, but he's  
14 describing his current state of mind, which only he can  
15 observe.

16 MR. BURLINGAME: Well, I think you would have to  
17 have much more context as to why the state of --

18 THE COURT: As a matter of inference, if a person  
19 has a state of mind, he's likely to act in accordance with  
20 that state of mind.

21 The statement to the friend I'm inclined to let in.  
22 What else?

23 MS. SHARKEY: That's it for the testimony today.  
24 That statement comes in at the -- prior to the defendant going  
25 to jail in '01. And also, after his release in '05.

1 THE COURT: He made the same statement to this guy?

2 MS. SHARKEY: He made the same statement.

3 THE COURT: Current, okay. If he said that, 'I  
4 presently intend,' okay.

5 MS. SHARKEY: And similarly, the witness Salvaggio  
6 is also a friend of the defendant, lives in Howard Beach,  
7 knows everyone in Howard Beach. As apparently I've learned,  
8 everybody knows everybody in that small community.

9 That is the same grounds for Mr. Salvaggio, both  
10 before and after.

11 THE COURT: Was Salvaggio a member of the crime?

12 MS. SHARKEY: No.

13 THE COURT: Conspiracy?

14 MS. SHARKEY: No.

15 THE COURT: I'll let it in. It's not of much value,  
16 but he's entitled to put in a defense. He has a burden.

17 MS. SHARKEY: And the other statement --

18 MR. BURLINGAME: I'm sorry, what was the statement  
19 that's coming in through Salvaggio?

20 MS. SHARKEY: Similar to the statement of Mr. Goia.  
21 Prior to the defendant going to jail after -- prior to the  
22 defendant going to jail in October of 2001.

23 And then, Judge, we have two individuals that were  
24 incarcerated -- three individuals that were incarcerated with  
25 Mr. Carneglia during the incarceration of '01 to '05.

1 THE COURT: Say that again, please.

2 MS. SHARKEY: Yes, Judge.

3 We have three witnesses who we intend to call who  
4 were present with Mr. Carneglia during the course of his  
5 incarceration from '01 to '05.

6 THE COURT: And?

7 MS. SHARKEY: And one of those witnesses will  
8 testify. That is Salvatore Cassiano to a contemporaneous  
9 statement under Rule 801(c) and 803-3 about the defendant's  
10 withdrawal.

11 And the other two witnesses I don't believe, and  
12 I'll apply to the Court at tomorrow morning's session, I've  
13 had some trouble with the weather with some of these  
14 witnesses. The communications to Jamaica have been awful. As  
15 you know, we're calling a witness who was incarcerated.

16 THE COURT: And what is the witness going to say?

17 MS. SHARKEY: Cassiano will say that the defendant  
18 communicated to him a contemporaneous withdrawal.

19 The other two witnesses are more witnesses to the  
20 defendant's life in prison and their observations of the  
21 defendant.

22 As I said, I'm having some problems --

23 THE COURT: Okay.

24 MS. SHARKEY: -- but we could talk about it. They  
25 won't be on the stand today.

1 MR. BURLINGAME: Judge, correct me if I'm wrong, my  
2 understanding of the state of mind exception is that it cannot  
3 be introduced for its truth. It's to prove extraneous fact.

4 THE COURT: It has to be introduced to the truth of  
5 the state of mind.

6 MR. BURLINGAME: Right, but this is, their reason  
7 they're introducing the statements is solely to prove the fact  
8 at issue that the defendant withdrew from the Gambino Family.  
9 That's specifically precluded by the rule.

10 THE COURT: Well --

11 MR. BURLINGAME: This goes to: I executed the  
12 document.

13 THE COURT: Not past. It's present. If you have a  
14 state of mind, you're likely to act on this state of mind --

15 MR. BURLINGAME: But exactly --

16 THE COURT: -- present and future. Not past.  
17 Present and future when you have a state of mind.

18 MS. SHARKEY: Right.

19 THE COURT: You can brief it.

20 MR. BURLINGAME: It says, the rules, just let me  
21 read the text of the rule.

22 "The statement of the declarant's then-state of  
23 mind, emotion, sensation or physical condition, such as  
24 intent, plan, motive, design, mental feeling, pain or bodily  
25 health, but not including a statement of memory or belief to

1 prove the fact remembered or believed, unless it relates to  
2 the execution, revocation, identification or terms of the  
3 declarant's will."

4 There's no, I think that we need a much stronger  
5 contextual proffer as to why the then-existing state of mind  
6 was something other than just purely a self-serving statement.

7 THE COURT: I don't agree, but you can brief it.

8 MR. BURLINGAME: Well...

9 THE COURT: Anything further?

10 MS. SHARKEY: Judge, we, I have a question.

11 Do you anticipate that we're going to have the  
12 jurors to move forward today?

13 THE COURT: I do.

14 MS. SHARKEY: Okay. Okay.

15 Do you, there's supposed to be a snowstorm tonight  
16 and we have the witness from Jamaica scheduled for tomorrow  
17 and the facility from where he will be testifying isn't as  
18 flexible as the courthouse.

19 THE COURT: Where is it? Is it in the northeast?

20 MS. SHARKEY: No, it's in Jamaica. It's in  
21 Kingston.

22 THE COURT: It's not snowing in Jamaica. What's the  
23 problem?

24 MS. SHARKEY: No, no, no, but it's at a university  
25 and they have time slots allotted.

1 THE COURT: Excuse me, that is your problem. I told  
2 you that last week. I am not adjourning this trial further.

3 MS. SHARKEY: I'm not asking you to. I'm asking if  
4 there's a phone number I could find out so I could let them  
5 know. That's all.

6 THE COURT: Excuse me. We are sitting today. We  
7 are sitting tomorrow.

8 MS. SHARKEY: Okay. That's all I -- that's it.  
9 That's it.

10 THE COURT: Anything further?

11 MS. SHARKEY: Yes.

12 THE COURT: Now, let's turn to my proposed changes  
13 on those pages.

14

15 (Continued on following page.)

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1           THE COURT: Line three. I say, or may not be  
2 considered as evidence. "Considered as evidence" is  
3 misleading. It is evaluated by you, which is what we are  
4 talking about. It is evidence that they have to consider.  
5 In place of "considered" I put evaluated by you. Instead as  
6 evidence we can say evaluated by you as proof. I think that  
7 is better. That will be done. Evaluated by you as proof.

8           On the next line I would end it with "that charge by  
9 conspiracy period" and strike-- if the conspiracy in passed  
10 membership the defendant in it have been independently  
11 proved. It does not have to be independently proved. It has  
12 to be proved. I would take all of that out

13          MS. SHARKEY: How does it read, Judge?

14          THE COURT: The defendant's continued membership in  
15 that charged conspiracy period.

16          MS. SHARKEY: We ask that the charge remain as is,  
17 your Honor. I think it explains it more fully.

18          THE COURT: I think it's confusing confusing and  
19 it's wrong. It's out.

20          Under the statute of limitations, the first line  
21 bars conviction of instead of on conspiracy. The next full  
22 paragraph, last line, a charged racketeering act need not  
23 have been committed on or after, since we used "on"  
24 throughout.

25          MR. BURLINGAME: Where are we?

1 THE COURT: Last line, third full paragraph, page  
2 34.

3 MR. BURLINGAME: On or after. In the first sentence  
4 the one your Honor changed the statute of limitations bars  
5 conviction of racketeering crimes?

6 THE COURT: Correct.

7 MR. BURLINGAME: Should it be racketeering  
8 conspiracy?

9 THE COURT: Yes, it should be. I thought it was  
10 implied. You are better off having it. Racketeering  
11 conspiracy crimes.

12 MS. SHARKEY: Racketeering conspiracy crimes.

13 THE COURT: Yes. We might as well, going that far,  
14 say of a racketeering conspiracy crime. Racketeering  
15 conspiracy crime. That is the way it is. Page 35, the first  
16 full paragraph I would strike the whole thing. It just  
17 repeats in effect the next full paragraph.

18 MR. BURLINGAME: Agreed.

19 MS. SHARKEY: Which paragraph?

20 THE COURT: The first full paragraph on 35.

21 MS. SHARKEY: Yes.

22 THE COURT: It is just repetitive. That is all I  
23 have at the moment-- I have on page 36 I have some changes.

24 The second full paragraph parallel the change I made  
25 a few moments ago, incarceration of the defendant may be

1 evaluated by you as proof --

2 MS. SHARKEY: Proof of his withdrawal.

3 THE COURT: -- of withdrawal instead of considered  
4 as evidence.

5 MS. SHARKEY: Okay.

6 MR. BURLINGAME: Judge, while we're there, I know  
7 your Honor had an opportunity to review our letter. But I  
8 would just -- I think it would take an extremely minor  
9 correction to make this an accurate statement of the law,  
10 something to do with the defendant's conduct while he's  
11 incarcerated, not the mere fact that the government locked  
12 him up and threw him in jail.

13 There has to be an affirmative act to effect the  
14 withdrawal and an involuntary act of being sent to prison is  
15 not it. We'd have no objection to defendant's conduct while  
16 he's incarcerated, anything that shows that he has to do the  
17 act, but what that suggests now simply him being scooped up  
18 by the government and put in jail effects a withdrawal and  
19 that's not the case.

20 THE COURT: It is some proof.

21 MS. SHARKEY: I'm sorry, you are leaving it as is?  
22 I would request that the Court not add that modifier. The  
23 cases --

24 THE COURT: Excuse me. I am changing that paragraph  
25 to read: Incarceration of the defendant may be evaluated by

1 you as proof of withdrawal, et cetera.

2 Do you object to that? That is the only change  
3 being made.

4 MS. SHARKEY: Sorry, I misunderstood.

5 THE COURT: The fourth paragraph, the last line, by  
6 considering all of the evidence on the issue, instead of in  
7 deciding which evidence is more convincing. I think that is  
8 more accurate. The evidence submitted by either side may be  
9 used.

10 MS. SHARKEY: All the evidence on the issue period.

11 THE COURT: All of the evidence on the issue or we  
12 can say all of the evidence. I think that may be better.  
13 What do you prefer?

14 MR. BURLINGAME: I think that is better.

15 MS. SHARKEY: Yes.

16 THE COURT: All of the evidence. That's the way it  
17 will read.

18 Last line on page 36, it's more accurate and clearer  
19 to say, the last line. If you cannot say upon which side it  
20 weighs its weight is heavier, the defendant has not met his  
21 burden of proof on the issue. Instead of must resolve the  
22 question. That seems to me --

23 MS. SHARKEY: Could you repeat that.

24 THE COURT: Yes. Last line will read. The last two  
25 lines -- we have one change on the next to last. The two

1 lines together, last sentence reads as follows:

2 If the evidence appears to be equally balanced, or  
3 if you cannot say upon which side its weight is heavier, a  
4 defendant has not met his burden of proof on the issue.

5 MR. BURLINGAME: Judge, I think that clause would be  
6 fine, but I think we should keep the final clause, you must  
7 resolve the question against the defendant when the  
8 government does not meet its burden of proof --

9 THE COURT: No, I took out generally, the must find  
10 guilt throughout the charge, because of my view that is an  
11 improper charge and the same thing is true of this burden.

12 MR. BURLINGAME: Right. Where the government is  
13 carrying the burden and the instruction the government has  
14 not met its burden you must acquit the defendant--.

15 THE COURT: I did not.

16 MR. BURLINGAME: Does not say you must acquit the  
17 defendant if the government doesn't carry its burden?

18 THE COURT: This is the way I want this. If you  
19 have a problem, let's see it.

20 MR. BURLINGAME: No, it was a perceived imbalance.  
21 If you are telling me the instruction do not otherwise --

22 THE COURT: I am not tell you that at all. I am  
23 telling you, if you have an objection to specific language  
24 make it.

25 MR. BURLINGAME: I'm fine, Judge.

1           THE COURT: That is the charge as we go through it  
2 we may see little minor touch ups, which we can take care of.  
3 We will make those changes. As it now stands that is what is  
4 going to the jury.

5           MR. BURLINGAME: Judge, we request an opportunity to  
6 brief the presence impression issue. We may very case law on  
7 that.

8           THE COURT: By all means, please do.

9           MR. BURLINGAME: Would we-- obviously it will be  
10 difficult to brief it while sitting in court--.

11          THE COURT: There is little time now while we're  
12 waiting. I am not adjourning the case further. We have to  
13 move. I can always strike it if you convince me.

14          MR. BURLINGAME: I just think the basics of the  
15 issue is the context of the conversation which is important  
16 so that your Honor evaluate it on the foundation laid down  
17 for that particular conversation rather than a blanket rule  
18 anybody from the neighborhood said anything to the defendant.

19          THE COURT: It is not a blanket rule. I am telling  
20 you what my general view is on it and I will have to rule on  
21 it on individual pieces of testimony.

22          MR. BURLINGAME: My understanding, what statement of  
23 the defendant would not come in under your Honor's ruling as  
24 to his states of mind. As I understand it the ruling is if  
25 the defendant said it then it shows what his state of mind

1 was at that moment, then it comes in, so why have a hearsay  
2 rule?

3 MS. SHARKEY: Do you want me to respond, Judge.

4 THE COURT: Part of the reason is there is no direct  
5 way of knowing what is in a person's mind except what the  
6 person says is in his mind. Therefore, you expand the  
7 hearsay rule or extend the hearsay rule to what he says is in  
8 his mind to prove what was in his mind earlier to prove what  
9 happened earlier, because that would negate the whole hearsay  
10 rule.

11 But with respect to current state of mind, where the  
12 current state of mind is relevant, or current state mind to  
13 prove future conduct you are not really dealing with the  
14 credibility issue, where his memory is involved.

15 MR. BURLINGAME: I agree. That would be the  
16 point -- that would be exactly correct why your Honor first  
17 question, were these people members of the conspiracy, it  
18 was, hey, let's conduct some Gambino family activity --

19 THE COURT: If they were members of the conspiracy,  
20 I would not have allowed it in. I would have balanced  
21 everything. They are not. They are just neighbors.

22 MR. BURLINGAME: What you are saying it's important  
23 to show in the context of the conversation, it's important to  
24 show his state of mind --

25 THE COURT: Excuse me. Let me explain again my

1 view, which may or may not be the proper view.

2 If he is telling one of his co-conspirators  
3 something one way or the other. Generally he is doing that  
4 to enhance his position in the group and I wouldn't let it  
5 in. But each statement and each piece of testimony has to be  
6 evaluated in the light of the underlying theory and principle  
7 of the rule.

8 MR. BURLINGAME: Right. The question here if you're  
9 not talking -- if he was talking to his eleven year old niece  
10 and said, I'm no longer part of the conspiracy, there is no  
11 indicia of liability. It doesn't matter what his state of  
12 mind is at that time.

13 THE COURT: Yes, it does. If he thinks he's not  
14 going to be a member, it is likely that he will act in that  
15 way, if he is telling the truth about his own state of mind.

16 MR. BURLINGAME: There needs to be some indicia --  
17 the presence or the present state of mind there is some  
18 external factor, which gives the Court indicia of  
19 reliability, it's the persons' state of mind.

20 If it's just a random conversation, there is no  
21 indicia, why he is telling the truth then rather than five  
22 minute later he said something different.

23 THE COURT: You can argue that. I will consider  
24 each statement separately.

25 I am informed that juror number four is still in



1 Central Islip and won't be here until 10:30 or 10:45. The  
2 marshals are making trips back and forth to collect jurors so  
3 I think we can assume that we will break now until eleven  
4 o'clock.

5 MS. SHARKEY: We can do the transcripts.

6 THE COURT: If you want to brief it, go ahead.

7 MR. BURLINGAME: Would that be a futile briefing,  
8 your Honor?

9 THE COURT: No. It's a very interesting area of the  
10 evidence that I used to think about a lot. I haven't thought  
11 it about it for many, many years. It will be interesting for  
12 me to think about it again.

13 MR. BURLINGAME: We'll see if we can put something  
14 together.

15 THE COURT: It's interesting to read your briefs.  
16 They are always useful and thoughtful.

17 MR. BURLINGAME: We'll take all of the compliments  
18 that we can get.

19 THE COURT: You deserve it. So does defense counsel.

20 MR. BURLINGAME: I think, before we go off the  
21 record we can deal, with the two transcripts, the ones you  
22 showed us on Friday, we can address that issue now. We don't  
23 believe those transcripts are properly admitted.

24 THE COURT: Give me whatever you have and I will  
25 rule on it.

1 MS. SHARKEY: I don't have that at the moment.

2 THE COURT: It's twenty to 10:00. Why don't we break  
3 until ten and then you will have everything together, give me  
4 the copies. June while give you access to her copying  
5 machine and 10:00 I will consider the issue.

6 MS. SHARKEY: Could I just suggest we do it a little  
7 later, we might as well bring in both sets of transcripts.  
8 The transcripts that Mr. Burlingame is referencing --

9 THE COURT: 10:30. We will see you 10:30 and we  
10 will make all the other preliminary rulings that are to be  
11 made today.

12 MS. SHARKEY: Thank you.

13 (Recess taken.)

14 (Followed on next page.)

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1           THE COURT: Court Exhibit 5, the letter of March 2nd  
2 with respect to state of mind. I have reviewed the letter.  
3 It's a very interesting letter, but it doesn't change my  
4 mind.

5           MS. SHARKEY: Sorry, Judge. You haven't changed  
6 your mind. Okay.

7           THE COURT: Now, we have problems with respect to  
8 transcripts. Do you have them?

9           MS. SHARKEY: I do, Judge. I gave a set to  
10 Ms. Seifan, who is looking at them. I have a set for the  
11 Court. I don't think, just to give you background, I don't  
12 think there will be argument on most of them. We ask for the  
13 full transcript. There is one new call that we ask be  
14 included. Judge, the set that I handed you are for the jail  
15 calls of Charles Carneglia.

16          THE COURT: Mark this as Court Exhibit 6, today's  
17 date. This is February 14th?

18          MS. SHARKEY: Yes, Judge. The government -- we're  
19 talking about Charles Carneglia's jail calls. The government  
20 is seeking to put in a portion of the February 14th call at  
21 1:31 p.m. it's the defense's position that that portion  
22 takes this out of context and we're seeking to put in the  
23 entire call and we have prepared a transcript of the entire  
24 call. We've included the government's transcript without  
25 change.

1 THE COURT: Where is the government's transcript?

2 MS. SHARKEY: It starts at page 11.

3 THE COURT: This is all one call.

4 MS. SHARKEY: All one call.

5 THE COURT: I will allow it.

6 MR. BURLINGAME: The only problem, we haven't --  
7 since we were provided the transcript this morning, we  
8 haven't had an opportunity to review the accuracy.

9 THE COURT: Look at it while you can.

10 MR. BURLINGAME: What we'd ask is that we put the  
11 calls on through our witness in the manner that we planned  
12 to.

13 THE COURT: Put the whole call in.

14 MR. BURLINGAME: Then we have no way of knowing --  
15 it takes a while to listen to the call and check the  
16 transcript.

17 THE COURT: Check it now while we're waiting for the  
18 jury.

19 MS. SHARKEY: February 14, 2008, of 7:17 p.m., again  
20 we've included the entire call, the government excerpted a  
21 part of the call that we think misrepresents the context.  
22 The government's call is the first -- one second.

23 (Pause.)

24 MS. SHARKEY: That transcript, Judge, is the entire  
25 phone call.

1 THE COURT: What was the government's part?

2 MR. BURLINGAME: Excuse me?

3 THE COURT: What was your part that you wanted to  
4 put in?

5 MR. BURLINGAME: Judge, the fundamental problem, we  
6 don't object to playing the full calls. We had problems with  
7 the defendant's transcript being accurate. Your Honor  
8 ordered --

9 THE COURT: Excuse me. I'm going ahead. Don't keep  
10 arguing about it.

11 MR. BURLINGAME: It's fundamentally unfair.

12 THE COURT: You can put your transcript in later.  
13 The jury is coming at great risk and burden to themselves.  
14 I'm not putting off the rest of the case. Let's deal with  
15 what we have.

16 MR. BURLINGAME: I don't want to put the  
17 government's imprimatur on the defendants.

18 THE COURT: You don't have to put it on. If you  
19 would like, understanding your problem, that the defendant  
20 should have given you this earlier, you can put on your part  
21 with your transcript and then we'll immediately thereafter  
22 play the whole part.

23 MR. BURLINGAME: Thank you.

24 MS. SHARKEY: With the defense transcript?

25 THE COURT: Correct.

1 MS. SEIFAN: I'm noticing in your transcript you  
2 indicated the beginning of the government excerpt and it's  
3 not the government's excerpt.

4 MS. SHARKEY: I believe it is.

5 THE COURT: The government is going to play its own  
6 and you'll play the whole transcript.

7 MS. SHARKEY: The third call, Judge, is not part of  
8 the government's call.

9 THE COURT: This is April 3rd, 8:20?

10 MS. SHARKEY: Yes.

11 What April 3rd of 2008 does is it explains the  
12 government April 13th call, which we submit is taken out of  
13 context. It's one of the calls that I described to the Court  
14 as sounding somewhat sinister in and of its own accord.

15 THE COURT: It can come in.

16 MS. SHARKEY: Thank you.

17 THE COURT: In context.

18 MS. SHARKEY: The final call, Judge, is the full  
19 call of the government's transcript --

20 THE COURT: You have April 4th at 8:34. What is  
21 that?

22 MS. SHARKEY: That is the full transcript of the  
23 government's April call.

24 THE COURT: The government will put its portion in  
25 and then you will put the whole thing in.

1           What about April 13th?

2           MS. SHARKEY: It's the full transcript of the  
3 government's call.

4           THE COURT: The government has a portion which you  
5 will put in and then they will put in the whole thing.

6           MS. SHARKEY: And the May 25th is the full  
7 transcript of the government's call.

8           THE COURT: Why do we need yours?

9           MS. SHARKEY: Theirs is excerpted. They have only  
10 used a few lines. Ours is the full transcript of the call.

11          MR. BURLINGAME: Judge, I would ask that if we will  
12 play them immediately after, you explain what is happening.

13          THE COURT: I will tell them.

14          MR. BURLINGAME: Judge, I would also just return  
15 back to the initial issue from the government's letter, I  
16 understand Your Honor is not going to change its ruling, I  
17 would ask that a limiting instruction then be provided to the  
18 jury.

19               This is going to his state of mind and not to show  
20 his previous conduct, on the face of the rule --

21          THE COURT: Not to show previous conduct?

22          MR. BURLINGAME: It's limited -- these conversations  
23 are limited for considering solely what was in the  
24 defendant's mind at that time and not considering whether he  
25 took any conduct --

1 THE COURT: Prior to this.

2 MR. BURLINGAME: Or after in furtherance.

3 THE COURT: No. In furtherance I think it comes in.

4 MR. BURLINGAME: I took the case out of Your Honor's  
5 treatise. It's not to show conduct and to show state of mind  
6 alone.

7 THE COURT: May I see my treatise. It's a very  
8 difficult problem --

9 MS. SHARKEY: Judge, Ms. Van Ness is joining me at  
10 defense table. She has been assigned by the Court --

11 THE COURT: It may not be used to show previous  
12 conduct. It doesn't say anything about concurrent or future.  
13 Your own quote.

14 MR. BURLINGAME: Sorry. We will get that  
15 instruction.

16 THE COURT: Not to show prior conduct.

17 MS. SHARKEY: Judge, the other set --

18 THE COURT: Mark your transcripts, please, as  
19 defendant's items of evidence. February 14, 2008, 1:31  
20 Defendant's N.

21 MR. FARBER: I think we're up to Q.

22 THE COURT: Defendant's Exhibit Q.

23 MR. FARBER: I will tell you in two seconds, Judge.

24 MR. FARBER: We're up to R.

25 THE COURT: February 14, 2008, 1:31 p.m. is S.



1 February 4th, 2008, 7:17 is P.

2 April 3rd, 8:20 is U.

3 April 4th, 8:34 is V.

4 April 13th, 6:11 is W.

5 May 25th, 9:10 is X.

6 All admitted, for purposes of assisting the jury in  
7 understanding the transcript.

8 MS. SHARKEY: Judge --

9 THE COURT: The recording.

10 MS. SHARKEY: Now, physically, how do you want to do  
11 this?

12 Will the government play the entire call? Do you us  
13 to play the entire call?

14 THE COURT: You can arrange it with the government  
15 any way you wish.

16 MR. BURLINGAME: We will play you snippets with our  
17 transcripts and if you want to play something else you are  
18 welcome to.

19 MS. SHARKEY: We have to set up on your computer.

20 THE COURT: Do it.

21 MS. SHARKEY: We had -- I believe the paralegals had  
22 the transcripts at a copy center, which was not open this  
23 morning because of the weather. They are in the process of  
24 copying them and they have been since they came in this  
25 morning. That was part of the delay. When they stopped to

1 pick them up the place was not open because of inclement  
2 weather.

3           The other issue that we have are the John Carneglia  
4 phone calls. The defense had provided the prosecution last  
5 week, when we thought we were going through with the three  
6 transcripts that the defense seeks to introduce, they have a  
7 copy of this, I'm handing the Court a copy of the three  
8 transcripts and also a reference transcript. The defendant  
9 seeks, and I believe the government objects to introducing  
10 the May -- do you have the May 31st call in front of you,  
11 Your Honor?

12           THE COURT: I have the December 10th, February 14th  
13 and March 7th that you just handed to me. That is all I have.

14           MS. SHARKEY: You should have December 10th, May  
15 31st and February 14th. Didn't I just hand those to you?

16           THE COURT: Yes. I have December 10th, which is  
17 Defendant's Y.

18           February 14th, which is Defendant's Z.

19           May 31st, which is Defendant's AA, and March 7th,  
20 which is Defendant's BB.

21           MS. SHARKEY: Now, Judge, if I could explain the  
22 basis for the introduction of these calls, I would like to go  
23 to the March 31st call first, which I think Your Honor marked  
24 as Z.

25           THE COURT: Z is February 14th.

1 MS. SHARKEY: Sorry. AA is May 31st.

2 MS. SHARKEY: I would like to go to AA, Judge.

3 THE COURT: Yes.

4 MS. SHARKEY: The government seeks to introduce a  
5 phone call from Charles Carneglia on March 7th -- dated March  
6 7, 2008. That's the document that I handed to the Court with  
7 the yellow sticky. That call -- that is important for the  
8 Court to have before it to understand the context of our  
9 request for the introduction of AA. In that call --

10 THE COURT: Are you objecting to this?

11 MR. BURLINGAME: Yes.

12 MS. SHARKEY: We objected to all of the calls and  
13 the Court said that the government could introduce them.  
14 That's when we came back in the afternoon.

15 THE COURT: I'm finding that the conspiracy  
16 continued and this was in the aid of conspiracy, in  
17 furtherance of it while both Carneglias were members.

18 MS. SHARKEY: On page 11 of the government's call,  
19 which has the yellow sticky and underlined on March 7, 2008,  
20 the government is seeking to offer -- among other things -- a  
21 statement by Carneglia that my brother has been sending --

22 THE COURT: Which Carneglia is this?

23 MS. SHARKEY: Looking on March 7, 2008, that is  
24 Charles.

25 THE COURT: Yes.

1 MS. SHARKEY: "My brother has been sending messages,  
2 you know, tell my brother if he needs anything call me. I  
3 wouldn't call that house for all the tea in the world." The  
4 government is seeking to introduce, as the Court said,  
5 evidence of the -- of the ongoing conspiracy through the  
6 calls of Charles Carneglia or receiving messages from his  
7 brother. The May 31st call, Defendant's AA, in fact, puts  
8 that call in context.

9 The May 31st call, in fact, explains that the  
10 messages are that the defendant's brother is speaking to an  
11 unknown male that, "my brother needs a lawyer, I will get him  
12 one." This is the gist of the messages, "tell my brother, if  
13 he needs an investigator, I will get him one," so it's the  
14 defendant's position that for fairness, completeness, and  
15 context, Defendant's AA should be put into evidence to  
16 explain the messages that the defendant is receiving from his  
17 brother.

18 Additionally, Judge, as a secondary matter, it's  
19 relevant to the state of mind of John and the other  
20 individuals who are speaking in the course of the call.

21 THE COURT: I don't understand how it bears. First  
22 of all, it's long after the March call. March 7th is the  
23 call and this is May, doesn't explain prior messages.

24 MS. SHARKEY: It does for individuals who are  
25 incarcerated. They are neither allowed to speak to each

1 other on the telephone nor are they allowed, according to  
2 Bureau of Prisons rules, to write to each other.

3 THE COURT: What's the government's view.

4 MS. SEIFAN: The March 7th call between Jackie  
5 Cavallo and Charles Carneglia, the May 31st call is between  
6 John Carneglia and unknown male, we don't know who it is.  
7 It's not -- it's two months later and it's not the  
8 defendant's statement.

9 THE COURT: I will not let it in.

10 MS. SHARKEY: Respectfully, they are insinuating --  
11 direct proof of the continuance of the conspiracy is Charles  
12 Carneglia saying on March 7th, "my brother has been sending  
13 me messages, right." That directly references the May 31st  
14 call.

15 THE COURT: May 31st is two months after the call.

16 MS. SHARKEY: Right. The brother had been sending  
17 messages to Carneglia about his lawyer and about  
18 investigators. They are making it sound as if it's an  
19 ongoing conversation that goes to the conspiracy and is for  
20 conspiratorial illegal acts when, in fact, the messages go  
21 exactly to John Carneglia.

22 THE COURT: You don't know that. The message you  
23 are relying on took place two months after the call the  
24 government is relying on.

25 MS. SHARKEY: There are also additional calls prior

1 to this, Judge.

2 THE COURT: I don't have them before me. As to May  
3 31st, it's excluded. It's not sufficiently probative.

4 MS. SHARKEY: I would respectfully request that the  
5 Court reconsider that and if you want to instruct the jury  
6 that it goes to the weight or is the defendant's contention  
7 that this is what it explains, but factually it does, Your  
8 Honor, and that context has been selected --

9 THE COURT: Okay. You can put it in. I will not  
10 inhibit your contextual argument.

11 MR. BURLINGAME: Judge, then we will get into a back  
12 and forth with the tapes. We have dozens of tapes with John  
13 Carneglia talking with the defendant before and after this.  
14 We tried to limit the presentation to one call.

15 THE COURT: What have you got?

16 MR. BURLINGAME: This is the entire John Carneglia  
17 call on this sheet of paper.

18 MS. SEIFAN: They are seeking to introduce other  
19 calls.

20 MR. BURLINGAME: That had to do with the specific  
21 crime about Bobby Schiavo paying Christmas money, which is  
22 the extortion charge.

23 THE COURT: What else do you have?

24 MR. BURLINGAME: This idea that the defendant and  
25 his brother are not on good terms, we can play calls where

1 the defendant's brother is asking about how his brother's  
2 case is going. It's endless and extraneous. Your Honor, on  
3 403 grounds there is no probative value.

4 MS. SEIFAN: It's confusing. We don't see how it  
5 relates in any way --

6 MR. BURLINGAME: The only way it comes in as a rule  
7 of completeness and, as Your Honor observed, it's two months  
8 later, it's not the same participants in the call and there  
9 is extremely tenuous argument as to how it relates back to  
10 the call.

11 MS. SHARKEY: Respectfully, Judge, I go back to the  
12 contextualization of that phone call.

13 The government initially noticed numerous John  
14 Carneglia calls and for strategic purposes reflected the one  
15 that they put in.

16 The government also put in or intends to put in the  
17 March 7th call between Carneglia and Cavallo. My brother has  
18 been sending me messages. This call specifically --.

19 THE COURT: You can put it in. I ruled on it. What  
20 else?

21 MS. SHARKEY: The defendant also seeks to put in the  
22 call which is dated December 10th and I'm not sure what  
23 exhibit the Court has assigned to that.

24 THE COURT: I will tell you. It's Y.

25 MS. SHARKEY: The defendant seeks to put that call

1 in relevant to the state of mind of John Carneglia and the  
2 individual with whom he's speaking.

3 THE COURT: I don't see what his state of mind has  
4 to do with anything.

5 What does it have to do anything?

6 MS. SHARKEY: The reason that his state of mind has  
7 to do with something is the fact that the government has  
8 painted -- has brought forth evidence that John Carneglia is  
9 a powerful soldier in the Gambino crime family. Certainly  
10 his statement concerns his brother being disengaged and not  
11 responding to any outreach or comments --

12 THE COURT: It's used by you or proposed to be used  
13 by you to show a past events. It doesn't come in. Why is it  
14 excluded?

15 MS. SHARKEY: Judge, it's my same argument for the  
16 February 14th call. Again that is --

17 THE COURT: To show John Carneglia's state of mind,  
18 no.

19 MS. SHARKEY: It's also Charles Carneglia's Current  
20 state of mind. This is a call between Charles Carneglia  
21 and --

22 THE COURT: Where does it show Charles' state of  
23 mind?

24 MS. SHARKEY: One second. On page 3, Judge, about  
25 16 lines down, John carrying says what is up with the



1 heart --

2 MS. SEIFAN: What page?

3 MS. SHARKEY: Three. "What's up with the heart" .

4 Charles Carneglia: "I have no idea, John. I don't,  
5 I don't bother with these people."

6 John Carneglia: "What's up with the weasel, did he  
7 get sentenced yet" .

8 Charles Carneglia: "How the fuck do I know, John" .

9 Two lines down: John Carneglia: "Well, he is  
10 getting sentenced."

11 Charles Carneglia: "I will hear about it. I don't  
12 see anybody to listen to this shit, John." That goes --

13 THE COURT: Okay.

14 MS. SHARKEY: Thank you.

15 THE COURT: Z goes in.

16 MS. SEIFAN: The entire call?

17 THE COURT: If they want it for context, they can  
18 have it.

19 MS. SHARKEY: Thank you.

20 THE COURT: What about AA?

21 MS. SHARKEY: AA you already ruled and said that  
22 went in. That is what the --

23 THE COURT: BB.

24 MS. SHARKEY: I'm confused on the dates. Judge, we  
25 gave you three calls.

1 THE COURT: AA is May 31st at 10:31.

2 MS. SHARKEY: The Court ruled that goes in and --

3 THE COURT: BB is March 7th.

4 MS. SHARKEY: That is the government's call, Judge.  
5 I just gave that to the Court so that you can contextualize.

6 THE COURT: That is coming in as what exhibit  
7 number?

8 MR. BURLINGAME: March 7th?

9 THE COURT: Yes.

10 MS. SEIFAN: March 7th is coming in as Government  
11 Exhibit 230 T, as in Tom, dash five.

12 THE COURT: Exhibit 230 D-5. That will be coming in  
13 as a Government Exhibit. That is admissible. That covers  
14 everything, does it?

15 MS. SHARKEY: I think it does.

16 MS. SEIFAN: We have, in response to their  
17 introduction of these calls, we'd like to introduce two  
18 additional John/Charles Carneglia calls.

19 MS. SHARKEY: May we have a copy that we can see?

20 THE COURT: This is now government.

21 MR. NORRIS: 230 T-12 and 230 T-13.

22 THE COURT: May I see the transcript?

23 MR. NORRIS: Yes, Judge. We believe the date is  
24 wrong, 230 dash 13 is November 26th at 2:29 p.m.

25 MR. NORRIS: And 230 T-12 is November 27th. It

1 states it's 2007, but we think it's 2006. Yes, both calls  
2 are from 2006.

3 MS. SHARKEY: Judge, I would ask that the Court --  
4 that we can take care of authentication by stipulation, given  
5 these two additional calls, we will also seek to look at the  
6 record later this afternoon for calls which place the John  
7 calls in context and the Court has directed defense counsel  
8 to put the John calls in on our case.

9 MR. NORRIS: Just if I could briefly make clear,  
10 this is in response --

11 THE COURT: You want to put it in as rebuttal or  
12 part of your main case?

13 MR. NORRIS: I think we will put it in in our main  
14 date.

15 THE COURT: 230 T-12 is in evidence and 230 T-13 is  
16 in evidence.

17 MR. NORRIS: Briefly, Your Honor. To make one point  
18 with respect to the calls.

19 THE COURT: Yes.

20 MR. NORRIS: With respect to context, these are the  
21 context of these calls, these are about four months prior to  
22 the March 2007 call that the defense is seeking to  
23 introduce --

24 MS. SHARKEY: March 7th is your call.

25 MR. NORRIS: Withdrawn. The point is these calls are

1 from November 2006 and Ms. Sharkey referenced the defense  
2 would like to play calls in which the defendant expresses no  
3 concern or interest in what other people in the family are  
4 doing. These two calls --.

5 THE COURT: You wanted them admitted. I'm admitting  
6 them. You have to decide only whether up want them in your  
7 main case or as rebuttal. I take it you want them as your  
8 main case and you can have it.

9 MR. NORRIS: Thank you, Your Honor.

10 THE COURT: 230 T-12 and 230 T-13 are in evidence.  
11 Anything further? We are still waiting for the jury.  
12 Standby, please. They are half an hour away.

13 MS. SHARKEY: Judge, do you -- so we're ready to  
14 move forward, my understanding, it's supposed to snow all  
15 day, are you going to keep the jury until 5:00.

16 THE COURT: I am. However, the latest report I have  
17 indicates the snow is supposed to stop at 6:00. I was  
18 arranging for hotel accommodation, but I don't think that  
19 will be necessary because tomorrow it should be all clean.  
20 We will work until 5:00 and then tomorrow as usual. We  
21 should finish tomorrow, shouldn't we?

22 MR. BURLINGAME: The government will finish its case  
23 within a couple of hours of today.

24 THE COURT: The defendant doesn't have much. We'll  
25 have finish tomorrow and we will go ahead with summations as

1 scheduled on Wednesday. The Court is in recess.

2 MR. BURLINGAME: 11:30.

3 THE COURT: Yes, I think she should be here by then.  
4 Be prepared.

5 The defendant, please. Do you have a government  
6 witness?.

7 I did make one ruling in which I misspoke. If he  
8 told a co-conspirator that he was leaving, it does come in as  
9 an act.

10 MR. NORRIS: If it had been done that way.

11 THE COURT: It could have come in as an act.

12 (Followed on next page.)

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1 MR. BURLINGAME: It's the cross of Special Agent  
2 Haggerty, the extortion call.

3 THE COURT: Haggerty is recalled for cross. You are  
4 still under oath.

5 G R E G O R Y H A G G E R T Y ,

6 called as a witness, having been previously duly  
7 sworn, was examined and testified as follows:

8 MS. SHARKEY: Your Honor we had a question as to how  
9 the Court would best like the calls on the next witness put  
10 in. Do you want -- we have more fulsom calls --

11 THE COURT: Fulsom?

12 MS. SHARKEY: You went through it this morning. A  
13 more complete. Do you want us to do it on the defense or  
14 after each call is played.

15 THE COURT: It's your case.

16 What do you want to do?

17 MS. SHARKEY: I think it's easier to do it on cross  
18 with the paralegals.

19 MR. BURLINGAME: We have no objection.

20 THE COURT: Whatever you want to do.

21 Court Exhibit 7 from October 5, 1990. New York  
22 Times reported that Louie DiBono was found slain in the  
23 basement of the World Trade Center on October 4, 1990 at 3:00  
24 p.m. by consent. Court Exhibit A, the Court takes judicial  
25 notice the Rock and Roll band Pink Floyd made a concert

1 appearance at Yankee Stadium in the Bronx on June 10th and  
2 11th 1994. By consent.

3 MR. BURLINGAME: It was not on consent. It's  
4 judicial notice. We tried to get a stipulation.

5 THE COURT: Consent is refused. The Court takes  
6 judicial notice based on the document attached to the  
7 submission, which are part of the exhibit. Notice having  
8 been given to the defendant. The government was seeking  
9 judicial notice and the defense had an opportunity to  
10 contest. The defendants did not contest nor did it submit  
11 any evidence to the contrary.

12 THE COURT: We will break for lunch for half an hour  
13 at 1:00.

14 Bring in the jury, please.

15 MR. BURLINGAME: After the cross of this witness is  
16 completed, we will read a couple of stipulations and if Your  
17 Honor wants to do the judicial notice at that point.

18 THE COURT: You can read it to the jury yourself. I  
19 have taken judicial notice.

20 (Followed on next page.)  
21  
22  
23  
24  
25

Haggerty-Sharkey/cross

1 (Jury present.)

2 THE COURT: Be seated, please. Good morning.

3 Congratulations for making it this morning. I know it was  
4 difficult. I had arranged for hotel accommodations on the  
5 theory that it would continue to snow into the evening, but I  
6 now have the more current weather report indicating that the  
7 snow is tapering off on Long Island and in the City and would  
8 be completely ended by 6:00, you'll be taken home or to your  
9 place of pickup at about 5:00 and tomorrow we will proceed in  
10 the normal course when you get here at 9:30. Thank you on  
11 behalf of all of us.

12 Proceed, with cross. Mr. Haggerty is still under  
13 oath.

14 CROSS-EXAMINATION

15 BY MS. SHARKEY:

16 Q Good morning, Special Agent. How are you?

17 A Good morning, fine, Thank you.

18 Q Sir, you testified last Thursday on direct examination  
19 that as part of your job one of the things that you were  
20 doing was that you were conducting a wiretap on Carl Klein,  
21 Ronnie DeConza and Kevin McMahon, correct?

22 A Correct, DeConza.

23 Q It was DeConza, Klein and McMahon, those three  
24 individuals cell phones that the Court authorized a Title  
25 Three wiretap, right?



Haggerty-Sharkey/cross

1 A Correct.

2 Q And to refresh the jury's memory what that is, you  
3 listened in and fellow agents listened in on the calls made  
4 and received by McMahon, DeConza and Klein, right?

5 A Correct.

6 Q And how long did that wiretap investigation last, until  
7 you made arrests on that matter?

8 A Approximately five months, somewhere around there. At  
9 different points there were, for example Kevin McMahon's  
10 phone was intercepted longer and Ronnie DeConza and Carl  
11 Klein's telephone. They came in at different points.

12 Q And Agent Haggerty, you introduced a number of phone  
13 calls that were intercepted when you testified last week and  
14 those phone calls were between Kevin McMahon and Charles  
15 Carneglia and Kevin McMahon and Jodi Ryan, right?

16 A Among others, yes.

17 Q Well, did you put in any other phone calls last week  
18 besides between McMahon and Carneglia and McMahon and Jodi  
19 Ryan?

20 THE COURT: The witness puts in nothing, it's the  
21 government that offers it and the Court admits it.

22 Q You didn't testify about any other known calls except  
23 the calls between McMahon and Carneglia and McMahon and Ryan,  
24 correct?

25 A No, I believe there was also a conversation between

Haggerty-Sharkey/cross

1 McMahon and DeConza and then between -- no -- and then  
2 between Fats Alley Scala and Ronnie DeConza.

3 Q You are right. That you.

4 Now, there were a number --

5 A I'm sorry, and one other phone call between Kevin  
6 McMahon and someone I could not identify.

7 Q Fair enough. And there were actually hundreds and  
8 hundreds of phone calls, correct?

9 A Correct, thousands.

10 Q Thousands?

11 A Kevin dialed an awful lot.

12 Q I wanted to ask you about that. Kevin McMahon was on  
13 the phone quite a bit, right?

14 A Correct.

15 Q Kevin McMahon made thousands of phone calls, correct?

16 A In excess of a thousand. I don't know how many -- if it  
17 was more than 1,000, but it was at least a thousand.

18 Q And Kevin McMahon called hundreds of times to DeConza,  
19 right?

20 A No.

21 Q How about to Sal Scala?

22 A No, not hundreds.

23 Q How many would you say?

24 A To whom?

25 Q To DeConza.

Haggerty-Sharkey/cross

1 A There were not many, I would say 10 to 12, between Kevin  
2 McMahon and Ronnie DeConza.

3 Q How about Kevin McMahon and Carl Klein?

4 A There were a fair number, I'm guessing, as I did,  
5 estimating as I did in the last question, 30.

6 Q To Klein?

7 A Between Kevin McMahon and Carl Klein, yes.

8 Q And there were calls between Sal Scala and DeConza,  
9 right?

10 A Correct.

11 Q And calls between DeConza and Klein, right?

12 A No, I do not believe there were calls between Ronnie  
13 DeConza and Klein. If there were, may have been one.

14 Q And calls between McMahon and Klein, right?

15 A Yes, as we went over a few questions, but yes.

16 Q You testified that there were literally thousands of  
17 calls from Kevin?

18 A Kevin, yes, McMahon and --.

19 Q Kevin McMahon would make numerous calls in one day,  
20 right?

21 A Correct.

22 Q You testified that he was, I think you were gesturing he  
23 was a dialer, he used the phone a lot?

24 A Yes.

25 Q He would make numerous calls between different persons,

Haggerty-Sharkey/cross

1 right?

2 A Himself and other people, yes.

3 Q Now, you also testified that as a result of this  
4 investigation you arrested Charles Carneglia, right?

5 A Correct.

6 Q And when you arrested Charles Carneglia you went into  
7 his apartment, right?

8 A Correct.

9 Q And you went in with a number of agents, right?

10 A Correct.

11 Q Mr. Carneglia didn't seek to evade arrest, right?

12 A No.

13 Q And when you were in his apartment, you didn't discover  
14 any guns, right?

15 A No.

16 Q No silencers, right?

17 A No. None that were in plain sight. We didn't conduct a  
18 search. We didn't have a search warrant, but there were none  
19 in plain view.

20 Q When you say there were none in plain sight, had you  
21 suspected there were weapons or silencers present, you would  
22 have sought a search warrant, right.

23 MR. BURLINGAME: Objection.

24 A If I --

25 THE COURT: Sustained.

Haggerty-Sharkey/cross

1 Q In your job as an agent, you have sought search warrants  
2 subsequent to arrest of locations that were suspect of  
3 containing contraband, right?

4 MR. BURLINGAME: Objection.

5 THE COURT: I will allow that.

6 A When I had enough evidence to bring to the Court to get  
7 the probable cause that was necessary to obtain a warrant,  
8 yes.

9 Q Right. And you didn't suspect that there were hidden  
10 guns or silencers, right?

11 MR. BURLINGAME: Objection?

12 THE COURT: Sustained.

13 Q You didn't go and make an application --

14 THE COURT: Go to something else.

15 MS. SHARKEY: Nothing further.

16 Thank you.

17 THE COURT: Any redirect?

18 MR. BURLINGAME: No, Judge.

19 THE COURT: Thank you, sir.

20 Next witness, please.

21 MS. SEIFAN: We just want to read a stipulation.

22 The Court takes judicial notice that on October --

23 THE COURT: Give the number of the stipulation.

24 MS. SEIFAN: Court Exhibit 7:

25 The Court takes judicial notice on October 5, 1990,

Haggerty-Sharkey/cross

1 the New York Times reported that Louis DiBono was found slain  
2 in his car in the World Trade Center parking garage on  
3 October 4, 1990 at 3:00 p.m. Court Exhibit 8.

4 The Court takes you judicial notice that the rock  
5 and roll band Pink Floyd played a concert at Yankee Stadium  
6 in the Bronx on June 10th and 11th of 1994.

7 THE COURT: I take judicial notice of it. You can  
8 consider it true, absent contrary evidence.

9 MS. SEIFAN: Government Exhibit 413-S. Stipulation  
10 between the parties. It's hereby stipulated and agreed by  
11 and between the United States of America, by the undersigned  
12 Assistant United States Attorney and the defendant Charles  
13 Carneglia, by his undersigned attorneys, that:

14 One. John Gotti, Sr., was arrested on December 12,  
15 1990.

16 Two. This stipulation may be received into evidence  
17 at trial.

18 So stipulated. It's dated February 23, 2009, and  
19 it's signed by Kelley Sharkey and myself.

20 Your Honor, we move to admit Government Exhibit  
21 413-S.

22 THE COURT: Admitted.

23 MS. SEIFAN: Government Exhibit 414-S. It's hereby  
24 stipulated and agreed by and between the United States of  
25 America, by the undersigned Assistant United States Attorney,

Haggerty-Sharkey/cross

1 and the defendant Charles Carneglia, by his undersigned  
2 attorney, that:

3 One. Justine Carneglia, the defendant's niece was  
4 born in July 1976.

5 Two, this stipulation may be received in evidence at  
6 trial.

7 Dated February 23, 2009, signed by Kelley Sharkey  
8 and myself.

9 The government moves to admit Government Exhibit  
10 414-S.

11 THE COURT: Admitted.

12 MS. SEIFAN: Finally, Government Exhibit 3 is a  
13 certificate of birth for John Gotti, Jr. At this time we move  
14 to admit Government Exhibit 33 and publish it to the jury.

15 THE COURT: Admitted.

16 You may publish.

17 MS. SEIFAN: Just indicates date of birth is February  
18 14, 1964.

19 MS. SEIFAN: The next witness is Jamaica Hospital  
20 records witness, Ole Pedersen.

21 THE COURT: Swear the witness, please.

22 O L E P E D E R S E N ,

23 called as a witness, having been duly

24 sworn, was examined and testified as follows:

25 THE CLERK: State your full name and spell it for

Pedersen-Seifan/direct

1 the record

2 THE WITNESS: O L E; P E D E R S E N.

3 DIRECT EXAMINATION

4 BY MS. SEIFAN:

5 Q Good morning.

6 A Good morning.

7 Q Mr. Pedersen, where do you work?

8 A I work at Jamaica Hospital Medical Center.

9 Q How long have you worked there?

10 A I worked there since 1982.

11 Q What do you do for Jamaica Hospital?

12 A I'm vice-president of emergency medicine and public  
13 affairs.

14 Q What are your job responsibilities as vice-president of  
15 emergency medicine and public affairs?

16 A I'm administratively responsible for the emergency  
17 department and also responsible for public affairs, which is  
18 public relations, marketing, emergency management, community  
19 outreach and various other areas of the hospital.

20 Q What other jobs have you had at Jamaica Hospital since  
21 you started to work there?

22 A I began there as a paramedic and paramedic supervisor,  
23 then I was promoted to administrator of the emergency  
24 department, and then I became vice-president of the emergency  
25 department and this position at the same time.



Pedersen-Seifan/direct

1 Q And in the course of your duties, you are familiar with  
2 emergency department medical records?

3 A Correct.

4 Q Was Jamaica Hospital -- you said it was called Jamaica  
5 Hospital Medical Center?

6 A It was -- it's currently called Jamaica Hospital Medical  
7 Center. It was called the Jamaica Hospital prior to 1989.  
8 When a new hospital building was built, it was changed to  
9 Jamaica Hospital Medical Center about that time.

10 Q I'm going to show you what is marked for identification  
11 as Government's Exhibit 27. Can you take a moment and look  
12 at that document?

13 (Shown to witness.)

14 Do you recognize the document.

15 A Yes.

16 Q What is this document?

17 A Appears to be a copy of an older version of the hospital  
18 emergency department medical record from that period of time,  
19 approximately. 1977 is the date on this record.

20 Q Who is this record, who is the patient in the record?

21 A Excuse me?

22 Q Who is the patient listed?

23 A On this record it's Joseph Gallo.

24 Q How do you recognize this to be a Jamaica Hospital  
25 record?

Pedersen-Seifan/direct

1 A This record would have come to us -- a form that we use  
2 in the emergency department --

3 Q The form is a form that Jamaica Hospital --

4 A Every patient that comes in gets a record and the record  
5 is a pre-printed form and the form, at the time, comes off of  
6 a computer, the computer generates a number. At the time it  
7 was a hospital main frame that generated a number, which is  
8 on the top of this record.

9 Q What number is that?

10 A 32427. The top of this record says the Jamaica Hospital  
11 emergency department medical record. The form --

12 Q You testify prior to 1989 it was called the Jamaica  
13 Hospital?

14 A Correct. The front top was demographics, which was the  
15 practice of this form to have the demographics on the top for  
16 the patient. The nurse's information was on the bottom of the  
17 front and then on the back it was a form that was flipped  
18 over, it would be this way, it would be flipped over and the  
19 physician information was on the back and the physician would  
20 document on the back of the form.

21 Q And on this record the nurse's information is on the  
22 front and the doctor signed it on the back?

23 A Correct.

24 Q The second page?

25 A Correct. There is a pre-printed place for the nurse on

Beam-Seifan/direct

1 the front to sign and a pre-printed place for the doctor to  
2 sign.

3 MS. SEIFAN: The government moves to admit Government  
4 Exhibit 27 into evidence.

5 THE COURT: I have it as previously admitted.

6 MS. SEIFAN: It was subject to connection.

7 THE COURT: It's admitted without any limitation.

8 MS. SEIFAN: Thank you. No further questions.

9 MS. SHARKEY: No questions.

10 THE COURT: Thank you, sir.

11 Next witness.

12 MS. SEIFAN: Detective Beam.

13 THE COURT: Is this a new witness?

14 MS. SEIFAN: He may have just been added.

15 D A R I N B E A M ,

16 called as a witness, having been duly

17 sworn, was examined and testified as follows:

18 THE CLERK: State your full name and spell it for  
19 the record

20 THE WITNESS: Darin Beam; B E A M, D A R I N.

21 DIRECT EXAMINATION

22 BY MS. SEIFAN:

23 Q Good morning.

24 A Good morning.

25 Q Detective Beam, where do you work?

Beam-Seifan/direct

1 A 106th detective squad, NYPD.

2 Q How long have you worked at the NYPD?

3 A Approximately 18 years.

4 Q Right now you're working at the 106th detective squad?

5 A Yes.

6 Q What does that mean?

7 A Investigating cases from the 106th Precinct.

8 Q Where is the 106th Precinct located?

9 A In Ozone Park, Queens.

10 Q And prior to working the 106th Precinct, where did you  
11 work? Where were you assigned?

12 A Special victims, also located in Queens.

13 Q Prior to special victims unit?

14 A Yes.

15 Q Prior to that, where did you work?

16 A 106th detective squad, prior to that I worked at the 106  
17 also.

18 Q You did?

19 A Yes.

20 Q Where were you assigned in May 2003?

21 A The 106 detective squad.

22 Q Let me direct your attention to May 4, 2003. Were you  
23 working that day?

24 A Yes, I was.

25 Q Do you recall responding to a shooting that day?

Beam-Seifan/direct

1 A Yes, I do.

2 Q Do you recall the name of the victim?

3 A Yes, I do.

4 Q What was the name of the victim?

5 A Angelo Mugnolo.

6 Q Angelo Mugnolo?

7 A Yes.

8 Q Did you respond to the crime scene?

9 A Yes.

10 Q Do you recall generally what happened?

11 A Yes.

12 Q What?

13 A The victim in the morning hours, the victim got into his  
14 car, a vehicle came up by his auto in the morning and he was  
15 shot.

16 Q Where did he get into his car?

17 A At his residence. It was 157-36 83rd Street, in Queens.

18 Q Is that where Mr. Mugnolo lived?

19 A Yes.

20 Q Is there a church on 83rd Street?

21 A Yes.

22 Q So the church is on the same street as Mr. Mugnolo's  
23 house?

24 A Down the block, yes.

25 Q What is the name of the church?

Beam-Seifan/direct

1 A St. Helen's.

2 Q St. Helen's Church?

3 A Yes.

4 Q Showing you what has been marked for identification as  
5 Government Exhibit 415?

6 (Shown to witness.)

7 Take a look at that.

8 A Yes.

9 Q What is that?

10 A It's a map of the borough of Queens.

11 Q Is that the kind of map that you could buy in any store?

12 A Yes, it is.

13 MS. SEIFAN: Your Honor, I move to admit Government  
14 Exhibit 415.

15 THE COURT: Admitted.

16 MS. SEIFAN: I have no further questions of this  
17 witness.

18 MR. FARBER: No questions.

19 THE COURT: Thank you.

20 MR. BURLINGAME: The government calls Steven Kaplan.

21 JUROR: Could we lower the heat?

22 THE COURT: We will try.

23 S T E V E N K A P L A N ,

24 called as a witness, having been duly

25 sworn, was examined and testified as follows:

Kaplan-Burlingame/direct

1 THE CLERK: State your full name and spell it for  
2 the record

3 THE WITNESS: Steven Kaplan; S T E V N, k A P L A N.

4 DIRECT EXAMINATION

5 BY MR. BURLINGAME:

6 Q Good morning, sir.

7 A Good morning.

8 Q What do you do?

9 A I work for the Department of Justice.

10 Q Where?

11 A Eastern District of New York.

12 Q U.S. Attorney's Office in the Eastern District?

13 A That is correct.

14 Q When did you start working for the U.S. Attorney's  
15 Office for the Eastern District of New York?

16 A This morning.

17 Q Your first day?

18 A Yes.

19 Q What did you do before joining the U.S. Attorney's  
20 Office in the Eastern District of New York?

21 A I worked for the New York City Police Department for  
22 over 24 years.

23 Q What was your rank when you retired?

24 A A detective first grade.

25 Q And is that -- what is a detective first grade?

Kaplan-Burlingame/direct

1 A Highest ranking detective in the Police Department.

2 Q Where were you first assigned when you came out of the  
3 police academy?

4 A I was assigned to the neighborhood stabilization unit on  
5 number 18, in South Jamaica, I did my rookie training there.  
6 Then the Queens robbery task force and after that I was in  
7 the organized crime control bureau, narcotics division.  
8 After that I went to the career criminal apprehension unit.

9 Q What is that?

10 A A program designed to lock up or arrest, apprehend, the  
11 worst criminals in New York City.

12 Q And what did you do after that?

13 A After that I went to the cold case squad.

14 Q What is the cold case squad?

15 A We investigate unsolved homicides.

16 Q What year did you start with the cold case squad?

17 A In February of 1996.

18 Q And how long did you stay with the cold case squad?

19 A Until the end of January, end of February, I'm sorry, of  
20 2009.

21 Q You were there for approximately three years?

22 A Correct.

23 Q What were your primary duties there?

24 A I was primarily investigating organized crime homicide.

25 Q Directing your attention to February 7th of 2008, were



Kaplan-Burlingame/direct

1 you working that day?

2 A Yes, I was.

3 Q Did you make an arrest?

4 A Yes, I did.

5 Q Who did you arrest?

6 A Mr. Charles Carneglia.

7 Q Do you see him in the courtroom?

8 A Yes, I do.

9 Q Can you identify him?

10 A He's the yes in the white sweater, gray beard, gray  
11 hair.

12 MR. BURLINGAME: Identifying the defendant.

13 THE COURT: Yes.

14 Q Detective Kaplan, did you compile a report concerning  
15 your arrest of the defendant on February 7, 2008?

16 A Not on February 7th, but I did.

17 Q Concerning your arrest of the defendant, did you later  
18 write a report?

19 A Correct.

20 MR. BURLINGAME: Judge, with permission, may the witness  
21 refer to his report to refresh his recollection?

22 THE COURT: Granted.

23 Q Detectives Kaplan, were you part of a team when you  
24 arrested the defendant?

25 A Yes, I was.

Kaplan-Burlingame/direct

1 Q Did you have an arrest warrant?

2 A We did.

3 Q Do you know if arrest warrants were issued for any  
4 co-defendants?

5 A There were.

6 Q And where did you arrest the defendant?

7 A At his residence, which is 163-27 85th Street, in Queens  
8 County.

9 Q What time?

10 A Approximately 6:00 a.m.

11 Q Who were the other members of the arrest team?

12 A The team leader was Special Agent John Reynolds,  
13 Detective John Riley of the Port Authority Police Department,  
14 Detective Oscar Hernandez, and myself of the New York City  
15 Police Department.

16 (Followed on next page.)

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1 DIRECT EXAMINATION

2 BY MR. BURLINGAME: (Continued)

3 Q Was there any other -- you said John Reynolds.

4 What organization is he a special agent with?

5 A I'm sorry, he's a special agent in the Federal Bureau of  
6 Investigation.

7 Q Were there any other members of the FBI that morning?

8 A Yes, there were.

9 Q What?

10 A There was the FBI S.W.A.T. team led by Special Agent Gary  
11 Pontecourville.

12 Q How big is the S.W.A.T. team?

13 A P-O-N-T-E-C-O-U-R, "ville."

14 Q How many people are on the S.W.A.T. team?

15 A From what I recall, it was like, six to ten members of  
16 the S.W.A.T. team.

17 Q And if you could just explain to the jury; what happened  
18 that morning when you arrived at Mr. Carneglia's residence.

19 A We arrived, the S.W.A.T. team entered the residence and  
20 we waited. We were the, Detective Hernandez and myself were  
21 the outside front security, Special Agent Reynolds and Special  
22 Agent Reilly were the rear security, and we waited for Special  
23 Agent Pontecourville to come outside and tell us that they had  
24 cleared the residence.

25 Q And he was the head of the S.W.A.T. team?

1 A That's correct.

2 Q So, the S.W.A.T. team went in first?

3 A That's correct.

4 Q What happened after you were told that the residence had  
5 been cleared?

6 A We entered the residence and went to Mr. Carneglia's  
7 bedroom, which is on the second floor, the rear of the house.

8 Q Was he placed under arrest?

9 A He was.

10 Q Was he cooperative?

11 A Yes, sir.

12 Q What did you do after you placed the defendant under  
13 arrest?

14 A We placed him in Detective Reilly's unmarked auto, it's a  
15 Port Authority Police car, with Detective Reilly driving.  
16 Special Agent Reynolds was in the front passenger seat,  
17 Mr. Carneglia was in the rear, right passenger seat behind the  
18 passenger in the front, and I was behind the driver.

19 Q And where did you go?

20 A We went to 26 Federal Plaza, which is the FBI  
21 headquarters of New York City.

22 Q What happened when you got to FBI headquarters?

23 A We parked the car in the basement and went to the 26th  
24 floor for arrest processing.

25 Q What is arrest processing?

1 A Well, it's, in this case, it was a big procedure because  
2 there were almost 60 defendants in this case and it -- on the  
3 26th floor they have a whole big large area.

4 Arrest processing will begin with photographs,  
5 fingerprinting. You have to get the man's pedigree or the  
6 woman's pedigree.

7 Q What does that mean, pedigree?

8 A Pedigree is your hair color, your eye color, name, date  
9 of birth, where you live, where you were born.

10 Q And you said there were approximately 60 arrests that  
11 day.

12 Were those the defendant's co-defendants?

13 A Yes.

14 Q Now, are you familiar with some of the people arrested  
15 the same day as the defendant?

16 A Some of them, yes.

17 Q Do you know if Tommy Cacciopoli was arrested that day?

18 A Yes, he was.

19 Q Frank Cali?

20 A Yes.

21 Q ^ Mario Casalino?

22 A Yes.

23 Q ^ Domenico Cefalou?

24 A Yes.

25 Q Joseph Corozzo?

1 A Yes.

2 Q Jackie D'Amico?

3 A Yes, he was.

4 Q ^ Lenny DeMaria?

5 A Yes, he was.

6 Q Vinny Dragonetti?

7 A Yes.

8 Q Vinny Dragonetti, do you know who his father-in-law is?

9 A He is married to Nicholas Corozzo's daughter.

10 Q Was Richard Gotti arrested on February 7th, 2008?

11 A Yes, he was.

12 Q Vinny Gotti?

13 A Yes.

14 Q ^ Vinny Grillo?

15 A Yes.

16 Q Angelo Ruggiero, Junior?

17 A Yes.

18 Q And Gus Sclafani?

19 A Yes, he was.

20 Q Or August Sclafani.

21 Now, was Nicky Corozzo arrested that day?

22 A Nicky was not.

23 Q Do you know why not?

24 A Speculation. He was --

25 MR. FARBER: Objection.

1 THE COURT: Sustained.

2 Q Was there an attempt to arrest him that day?

3 A Yes, there was.

4 Q Was there evidence of flight?

5 A Yes, there was.

6 Q Are you familiar with Jackie Cavallo and Allen Meshanski?

7 A I am.

8 Q Were they arrested that day?

9 A No, they were not.

10 Q Who participated in the arrest processing of the  
11 defendant?

12 A The four mentioned individuals; Reilly, Reynolds,  
13 Hernandez, and myself.

14 Q And explain to the jury what happened during the  
15 defendant's arrest processing?

16 A Well, in this type of a processing, the first thing you  
17 have to do is unload your weapons. They don't want any  
18 weapons in the arrest processing area. So, we all unloaded  
19 our weapons.

20 Then, we were brought into another room where  
21 Mr. Carneglia sat at the table with the four of us, at which  
22 time Mr. Carneglia asked what is he being charged with. And I  
23 looked at the team leader, Reilly -- Reynolds, I'm sorry --  
24 and he said, "Read him his Miranda rights," which I did.

25 Q Did you actually read them off of a card?

1 A Yes, sir.

2 Q And is that your normal practice?

3 A Yes, it is.

4 Q And how did he respond when you read him his Miranda  
5 warnings?

6 A After each one, I don't have them in front of me, but  
7 after each one, I asked him if he understood what I was asking  
8 him and he said yes. And upon completion, I asked him to sign  
9 the paper and the his response was no autographs.

10 Q What was the paper that you asked him to sign?

11 A The Miranda warnings.

12 Q So, something that documented that he had received his  
13 Miranda warnings?

14 A That's correct.

15 Q All right. What did you do with that paperwork?

16 A I took the paper and I signed it myself that he had  
17 refused. And then, I handed it to Detective -- Special Agent  
18 Reynolds and he witnessed it. And that's it.

19 Q So, he refused to sign the paper acknowledging that he  
20 had been read his Miranda rights.

21 But you read him his Miranda rights and he nodded  
22 after each one?

23 A That's correct.

24 Q All right. What happened next?

25 A The next thing I did, somebody, and I believe it was



1 Reynolds, told him he was being charged with RICO. And  
2 Mr. Carneglia -- it was a joke and he didn't mean anything by  
3 it -- he says, 'RICO, the only RICO I ever heard of is Edward  
4 G. Robinson.'

5 Q What happened next?

6 A I told him that he was charged with five murders and I  
7 told him each murder individually.

8 Q Can you tell us what you told him?

9 A Yes.

10 Q And what he responded as well?

11 A I told him that he was being charged Albert Gelb, a court  
12 officer who was murdered in 1976. He stated that he never  
13 heard of him.

14 I told him you're being charged with Michael Cotillo  
15 from the Blue Fountain Diner, 1977. He said, 'never heard of  
16 him.'

17 I told him he was being charged with Sal Puma, 1983  
18 in Lindenwood. He said, I know a Sandy Puma, I don't know Sal  
19 Puma.

20 Then, after that, I told him ^ Louie DeBono at the  
21 World Trade Center, 1990. He said, 'I know Louie.'

22 And then, I told him about Jose Delgado-Rivera, at  
23 the airport, also 1990. And he said he never heard of him.

24 Q Did the defendant say anything after that?

25 A He did. He started talking. He repeated himself many

1 times by saying he can't believe these canaries. They're  
2 rats, don't trust them. And then he said, 'let me get this  
3 straight, the canaries are saying that I murdered a court  
4 officer, a guy at the Blue Fountain Diner, Puma, Louie and a  
5 guy at Kennedy airport.'

6 Q What, if anything, did you do when he said, 'a guy at  
7 Kennedy Airport?'

8 A Well, I looked at Reilly, Detective Reilly, and he smiled  
9 at me and we nodded because we had never mentioned --

10 MS. SHARKEY: Objection as to the --

11 A -- Kennedy Airport.

12 THE COURT: Strike the smile. The rest of it can  
13 stay in.

14 Q So, you had nodded to Detective Reilly.

15 And what was the purpose of nodding to Detective  
16 Reilly?

17 A Well, I just --

18 MS. SHARKEY: Objection.

19 THE COURT: I'll allow it.

20 A I looked, you know, I didn't nod. I just turned and  
21 looked at him, he looked at me, and we knew what we were  
22 talking about because we had never mentioned Kennedy airport  
23 before. Nobody at the table mentioned Kennedy airport.

24 Q When you explained to the defendant that he was charged  
25 with the murder of Jose Delgado-Rivera, you said, 'at the

1 airport?'

2 A That's correct.

3 Q And then, he was the first person to say it was Kennedy?

4 A That's correct.

5 Q None of the other law enforcement officers had specified  
6 Kennedy Airport up to that point?

7 A No.

8 Q So, he was the first person in the room to say the word  
9 Kennedy?

10 A Yes, sir.

11 Q What happened next?

12 A Then he started, you know, we were talking about various  
13 different things, nothing about the crimes. We were talking  
14 about baseball, about food. And he had mentioned -- then he  
15 went into, 'I gotta get out of here, I have to mount a  
16 defense, I have to go with my investigator and we have to go  
17 and talk to these witnesses, right, I have big problems.'

18 Q What next?

19 A Then, after that, we started -- again, small talk. It  
20 was a long day. And he mentioned longevity. He goes to me --  
21 not longevity.

22 First, he says to me, 'is this a death penalty  
23 case?' I didn't know what he was getting at. I was never  
24 asked that question before.

25 MS. SHARKEY: Objection. Move to strike.

1 THE COURT: Strike the phrase "I was never asked  
2 that question before."

3 The rest is in.

4 Q He asked you if he was charged with the death penalty.

5 And what did you respond?

6 MS. SHARKEY: Objection. It was just struck.

7 MR. BURLINGAME: I'm sorry, my understanding was  
8 that --

9 THE COURT: I'll allow it.

10 Q He asked you if he was charged with the death penalty?

11 THE COURT: Only to show the state of mind of the  
12 defendant.

13 Go ahead.

14 A I said, 'what does it matter to you?' And he said,  
15 'longevity runs in my family, my mother's over 90 years old  
16 and I don't want to spend the next 30 years in jail. I'd  
17 rather get the needle.'

18 Q What happened next?

19 A Can I refresh my recollection?

20 Q Sure.

21 A Oh, at this point, from what I recall, he stood up, at  
22 the next juncture and he motioned to me like this  
23 (indicating), 'Mingo (phonetic), what did you charge me with  
24 five murders for?' And then, I said --

25 Q What was the first word that he said?

1 A "Mingo." It's Italian.

2 Q Do you know what it means?

3 A It's just a phrase, I guess. It's just a, you know, what  
4 the heck, something like that.

5 Q Okay.

6 THE COURT: Indicating. Do you want to describe  
7 what the witness did when he said that?

8 MR. BURLINGAME: Oh, sure.

9 The witness stood up and placed his hands together  
10 in a supplicating gesture and bowed back and forth a few times  
11 while speaking.

12 THE WITNESS: He, he didn't bow, he just stood up  
13 straight. I'm sorry, I couldn't stand up. I'm sorry.

14 He just went like this (indicating), 'Mingo, what  
15 did you charge me with five bodies for?'

16 MR. BURLINGAME: The witness is making the same  
17 gesture.

18 Q And what did you respond?

19 A I told him there's, there were more, we just couldn't  
20 prove it.

21 MS. SHARKEY: Objection. Move to strike.

22 THE COURT: Strike that.

23 Q What happened next?

24 A At this point, he had asked if there was any of those  
25 other people in the room because the room started getting

1 crowded with more arrestees and he saw there was a lot of  
2 people in the room. And then, he turned around and he saw  
3 Vinny Dragonetti. They nodded to each other and then, that  
4 was it. I didn't answer him.

5 Q And Vinny Dragonetti, you testified that's the son-in-law  
6 of Nicholas Corozzo?

7 A That's correct.

8 Q Did he see anyone else in the room?

9 MS. SHARKEY: Objection.

10 THE COURT: Whether he saw it or not is for the jury  
11 to determine. Just let the witness describe what happened.

12 Q What happened next?

13 A Next, Joseph Corozzo, Senior walked past.

14 MS. SHARKEY: Objection.

15 THE COURT: I'll allow that.

16 A He didn't look at anybody. He just looked straight  
17 ahead, went to his seat and sat down. And Mr. Carneglia asked  
18 me, does Joseph have the same problems I do? And I said,  
19 don't worry about Joseph, worry about yourself.

20 Q Okay. What happened next?

21 A Then I asked him, I was kind of curious and I asked him,  
22 why did Little Joe, why did his son Joseph become a criminal  
23 defense attorney? And he said that Big Joseph didn't have a  
24 choice in it. He said he's got another son who's a very, very  
25 good civil attorney. He has two sons, one's a civil attorney

1 and young Joseph was a criminal attorney.

2 Q What happened after that?

3 A After that, Reynolds and Reilly took Mr. Carneglia away  
4 to be further processed.

5 Q So, to review: You testified that when you explained  
6 that the defendant was charged with 1976 murder of court  
7 officer Albert Gelb, the defendant said, 'Don't know him.'

8 Is that correct?

9 A That's correct.

10 Q And you testified that when you --

11 MS. SHARKEY: Objection.

12 MR. FARBER: Objection; asked and answered.

13 THE COURT: Yes.

14 Don't repeat what was already testified to, please.

15 Q Who was the first person, just again, who was the first  
16 person in the room to mention Kennedy Airport that morning?

17 MR. FARBER: Objection.

18 MS. SHARKEY: Objection.

19 MR. FARBER: Asked and answered.

20 THE COURT: Sustained.

21 Q And you testified that the defendant stated that to beat  
22 the case --

23 MS. SHARKEY: Objection.

24 Q -- he needed to get out and talk to witnesses?

25 MS. SHARKEY: Objection; asked and answered.

1 THE COURT: I'm sorry, I didn't hear the question.

2 MR. BURLINGAME: That in order to fight his case he  
3 needed to get out and talk to witnesses.

4 MS. SHARKEY: Objection; asked and answered.

5 THE COURT: Sustained.

6 MR. BURLINGAME: I have nothing further.

7 THE COURT: Take the placard down, please.

8 MR. BURLINGAME: Oh, sure.

9 CROSS-EXAMINATION

10 BY MR. FARBER:

11 Q Good afternoon.

12 A Good afternoon.

13 Q February of last year, you arrested Charles Carneglia at  
14 his home?

15 A That's correct.

16 Q And at that point in time, he was living with his  
17 90-plus-year-old mother and her aide, a companion?

18 A Yes, sir.

19 Q Those were the individuals living in the home with him?

20 A As far as I know.

21 Q And it was around 6:00 o'clock in the morning?

22 A Correct.

23 Q The S.W.A.T. time came in, secured the area. And then,  
24 you went into Mr. Carneglia's bedroom and arrested him?

25 A Correct.



1 Q And you describe Mr. Carneglia as being very cooperative?

2 A That's correct.

3 Q And is it fair to state that you didn't observe any  
4 contraband inside the home when you went in?

5 A No, I did not.

6 Q And you didn't observe any weapons?

7 A No.

8 Q And Mr. Carneglia was under supervision at that time; am  
9 I correct?

10 A I don't know.

11 Q You didn't know whether or not he was on supervised  
12 release from his previous case?

13 A Oh, yes, yes, I'm sorry.

14 Q And in fact, a condition of his supervised release is his  
15 home could be searched without a warrant; isn't that correct?

16 A That, I don't know.

17 Q You don't know about that?

18 A No.

19 Q You've been a police officer for --

20 THE COURT: Excuse me, I'm not sure that's the case.  
21 Was that limited to probation?

22 Q Did you notify Mr. Carneglia's probation officer, Larry  
23 Goldman?

24 A I did not.

25 Q Do you know if anyone else in the arrest team did?

1 A I don't know.

2 Q You don't know.

3 You brought Mr. Carneglia down to the precinct? Or  
4 to 26 Federal Plaza?

5 A That's correct.

6 Q FBI headquarters?

7 A Correct.

8 Q Correct?

9 A Correct, yes.

10 Q And you went up to the 26th floor?

11 A Correct.

12 Q And at that point in time, you read Mr. Carneglia his  
13 Miranda warnings?

14 A That's correct.

15 Q And I just want to go back for a second.

16 Before he left the home to get in the car with you,  
17 did Mr. Carneglia do anything with regard to his mother?

18 A He did.

19 Q And in fact, he kissed her good-bye?

20 A That's correct.

21 Q And now you're back at 26 Federal Plaza.

22 You read him his Miranda warnings; correct?

23 A Correct.

24 Q And you went through, you told him he was being charged  
25 with five distinct murders?

1 A Correct.

2 Q And you gave, not just the name of the victim, but you  
3 gave a bit of the detail with regard to each one?

4 A Very little detail.

5 Q You said Albert Gelb, the Court officer?

6 A I did.

7 Q That was pretty direct detail; isn't it? Correct?

8 A Not as far as a location.

9 Q Not location, but identifying the victim?

10 A Okay. I'll go with that.

11 Q So, by suggesting out there the court officer, it  
12 precluded Mr. Gelb -- Mr. Carneglia ever saying: Who, you  
13 mean the Court officer?

14 A That's correct.

15 Q And then, you asked him about the killing of Michael  
16 Cotillo at the Blue Fountain Diner?

17 A Michael Cotillo, yes.

18 Q He didn't say, 'at the diner?'

19 A No.

20 Q You didn't say, 'at the restaurant?'

21 A No.

22 Q You actually gave the name of the diner?

23 A That's correct.

24 Q And then, you talked about the killing of Sal Puma?

25 A Yes.

1 Q And again, you gave the year when that took place?

2 A Correct.

3 Q And then you talked about Louie ^ DeBono

4 A Yes.

5 Q And then you said Jose Delgado-Rivera at the airport?

6 A Correct.

7 Q It's your recollection you said "the airport?"

8 A That's correct.

9 Q You are sure you didn't --

10 A Positive.

11 Q -- might say JFK?

12 A Positive.

13 Q And you arrested Mr. Carneglia at his home in Ozone Park?

14 A Yes. Howard Beach.

15 Q Howard Beach.

16 And just so I make sure I understand, the airport  
17 that is close to where Mr. Carneglia lives is?

18 A Would be Kennedy airport.

19 Q JFK?

20 A Yes.

21 Q And you have no way of knowing when he said to you, as  
22 you said, oh, I don't know a Jose Delgado-Rivera, I know  
23 nothing about JFK, if he was just combining airport and JFK in  
24 his mind as one and the same?

25 MR. BURLINGAME: Objection.

1 A Could you...

2 Q You don't know what Mr. Carneglia was thinking when he  
3 said JFK.

4 A No.

5 Q You're making an assumption that he was admitting to  
6 something more than what he said?

7 A Could you repeat that, please?

8 Q When you raised your eyebrows, you said, and there was a  
9 smile between you and your fellow officers?

10 A Mm-hmm.

11 Q You were making an assumption that Mr. Carneglia admitted  
12 to something?

13 A Well, no, not admitting. He admitted to being -- it was  
14 at Kennedy airport.

15 Q Well, he said Kennedy airport, but you don't know if he  
16 said Kennedy airport because he uses Kennedy airport JFK  
17 interchangeably?

18 A No, I don't.

19 MR. FARBER: I would ask that the prosecution stop  
20 smirking in front of the jury, Your Honor. I think that's  
21 inappropriate.

22 THE COURT: I didn't see it, but if it did happen,  
23 stop.

24 MR. FARBER: Thank you.

25 Q He knew he was being charged with five murders; is that

1 correct?

2 A When I told him.

3 Q And he told you that he wanted to get out to try to fight  
4 the case?

5 A He did.

6 Q Was that an unusual statement to be made?

7 A No.

8 Q And he told you that, oh, the canaries that are liars and  
9 he has to do something to try to save himself from their lies?

10 A Can I go back to the last question again, please?

11 Q Which question is that?

12 THE COURT: Yes, you may amend your answer.

13 A When you said it's not unusual for somebody to say I have  
14 to get out and mount a defense.

15 It wouldn't be unusual, but the last time he mounted  
16 a defense --

17 MS. SHARKEY: Objection.

18 THE COURT: Sustained.

19 Q In your experience as a law enforcement agent, how many  
20 times has someone who's been charged with five murders gotten  
21 out on the street to fight their case from the outside?

22 A None, to my knowledge.

23 Q And so, is it fair to describe Mr. Carneglia as being  
24 panicked when he realized he was going to be in jail and  
25 having to fight his case from being in jail?

1 A His demeanor wasn't a person that was panicking, no.

2 Q He told he wanted to be able to get an investigator;  
3 correct?

4 A Correct.

5 Q He wanted to be able to get an investigator and go out  
6 and interview witnesses?

7 A Correct.

8 Q It wasn't that he told you he was going to try to  
9 threaten anyone; did he?

10 A No, he did not.

11 Q He told you he wanted to go out and get a lawyer?

12 A Yes.

13 Q He wanted to follow all the legal and proper channels to  
14 fight his case?

15 A Yes, he did.

16 Q In fact, he indicated that he was worried about spending  
17 the rest of his life in jail?

18 A Wouldn't we all be? Of course.

19 Q Now, at some point you said he went stood up and went,  
20 'Mingo, why are you charging me with five murders?'

21 A Mm-hmm.

22 Q Can you tell me where that is reflected in your report?

23 A Right here. It says: "Why did you charge me with the  
24 five murders?"

25 Q No, the mingo part.

1 A No, I didn't put that in.

2 Q You didn't put that in?

3 A No, I did not.

4 Q Is that something you might have remembered a little bit  
5 later?

6 A I remember him standing up and going, 'Mingo, why did you  
7 charge we with' -- either 'five murders' or 'five bodies.'

8 Q You wrote this report when? The next day after the --

9 A No, I did not.

10 Q How soon after the arrest?

11 A November of 2008.

12 Q And that detail didn't make it to your report then?

13 A I didn't write a report in the beginning, no.

14 Q But you're testifying about it today?

15 A There was a report that was written either that, on  
16 February 7th or within the few days following February 7th of  
17 2008, written by Detective Reilly.

18 Q You testified that Jo-Jo Corozzo walked in at some point.  
19 Into the room?

20 A That's correct.

21 Q And so, you can refresh the jury's recollection, Jo-Jo  
22 Corozzo is the consiglieri of the Gambino Crime Family?

23 A He is.

24 Q And he walked in and he -- you said he walked straight by  
25 Charles Carneglia and didn't even acknowledge him?



1 A He didn't acknowledge anybody. He very stoic. From what  
2 I remember, he just looked straight ahead and down, and he was  
3 placed in a seat. He didn't talk to anybody.

4 Q He didn't talk to Charles?

5 A No, he did not.

6 Q Charles didn't say, hey, Joe, how are you doing?

7 A No, he did not.

8 Q Now, you talked about 60-some-odd people being arrested?

9 A Correct.

10 Q And these were people who were part of one larger  
11 investigation?

12 A That's correct.

13 Q And in fact, the 60 people were all on one indictment?

14 A That's correct.

15 Q And isn't it correct, all of them but Charles Carneglia  
16 pled guilty?

17 MR. BURLINGAME: Objection.

18 THE COURT: Sustained.

19 Q Now, you mentioned a bunch of people on direct  
20 examination who were arrested?

21 A Correct.

22 Q You did not mention the name Jackie Cavallo?

23 A I didn't mention any names. I was asked names.

24 Q Was Jackie Cavallo arrested that day?

25 A That day? I don't recall.

1 Q He wasn't part of that indictment; is that correct?

2 A Not that -- I was mainly interested, I was a cold case  
3 detective and I was mainly interested in the homicides and  
4 attempted homicides.

5 So, no, he wasn't involved in the homicides or  
6 attempted homicide.

7 Q Allen Meshanski was not part of that indictment; am I  
8 correct?

9 A He was not.

10 MR. FARBER: One second, please.

11 (Pause in the proceedings.)

12

13 MR. FARBER: I have no further questions.

14 Thank you.

15 THE WITNESS: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. BURLINGAME:

18 Q Detective, Mr. Farber asked you a number of questions  
19 concerning the defendant's house and whether or not you were  
20 allowed to search it.

21 Do you remember that?

22 A Yes.

23 Q Did you ask the defendant if you could search his house?

24 A I did ask that. I did ask him.

25 Q What did he respond?

1 A He said no.

2 Q And what was it that led you to ask the defendant whether  
3 you could search his house?

4 MS. SHARKEY: Objection.

5 THE COURT: Just tell us what you observed.

6 A I observed, along with others, Mr. Carneglia walking back  
7 and forth down the hallway and there was a hole in the ceiling  
8 which leads to the attic. And every time somebody would walk  
9 back and forth in the hallway, he would stop his conversation  
10 and look; look at that person that was walking right by the  
11 attic.

12 Q And so, in response to observing that, you asked him  
13 whether or not you could search his residence?

14 A I did.

15 Q And he said no?

16 A That's correct.

17 Q And your understanding was that prevented you from  
18 searching his residence that day; correct?

19 A That's correct.

20 Q Even though you observed him acting suspiciously.

21 THE COURT: No, don't even.

22 Let's move ahead, shall we?

23 MS. SHARKEY: Move to strike.

24 THE COURT: To strike what?

25 MS. SHARKEY: Mr. Burlingame's comments.

1 THE COURT: Strike what?

2 MS. SHARKEY: Mr. Burlingame's -- withdrawn.

3 Withdrawn. Withdrawn.

4 Q Now, Mr. Farber also asked you a number of questions  
5 about the defendant wanting to get a lawyer, wanting to hire  
6 an investigator.

7 He also told you that he wanted to talk to  
8 witnesses; correct?

9 A That's correct.

10 Q And Mr. Farber asked you about Jo-Jo Corozzo walking by  
11 and not showing any reaction when he walked by the defendant?

12 A That's correct.

13 Q You said the room was filled with -- and he asked you  
14 whether or not Jo-Jo Corozzo was the consigliere of the  
15 Gambino Family?

16 A Yes, sir.

17 Q Okay. And you said the room was filled with  
18 approximately 60 other people who had been arrested that  
19 morning? There were dozens of people in the room?

20 A There were dozens, yes.

21 Q Okay. And is it fair to characterize all those people as  
22 members or associates of the Gambino Family?

23 MS. SHARKEY: Objection.

24 A Yes.

25 THE COURT: I'll allow that.

1 Q Did Jo-Jo Corozzo acknowledge any of them?

2 A No, he walked straight past. I told you, he was very  
3 stoic. He didn't talk to anybody. He sat in his chair,  
4 didn't speak to a soul.

5 Q None of the other people in the room?

6 A No.

7 Q So, he didn't single out the defendant to ignore?

8 A No.

9 Q And Mr. Farber asked you whether or not Jackie Cavallo  
10 and Alan Meshanski were arrested that day --

11 A No, they were not. I'm sorry.

12 Q -- correct?

13 A They were not.

14 Q Correct.

15 And but Gus Sclafani you testified was arrested that  
16 day.

17 That's correct; right?

18 A Gus was, yes.

19 MR. BURLINGAME: Nothing further.

20 THE COURT: Thank you, sir.

21 Next witness, please.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused.)

24 MR. NORRIS: One moment, please, Your Honor.

25 THE COURT: Yes.

1 MR. NORRIS: Can we just have one moment to confer  
2 with Counsel?

3 THE COURT: Yes.

4 (Pause in the proceedings.)

5

6 MR. NORRIS: I think we have a stipulation. I just  
7 need to get one document from outside. I'll just be very  
8 quick.

9 (Pause in the proceedings.)

10

11 MR. NORRIS: The Government calls, recalls --

12 MS. SHARKEY: We don't object to this witness  
13 testifying. We didn't have any notice.

14 Can I just get something out of back room?

15 THE COURT: Can you do what?

16 MS. SHARKEY: Can I have two minutes?

17 THE COURT: Yes, you have two minutes.

18 MR. NORRIS: Get the witness in the meantime.

19 THE COURT: Yes.

20 MR. NORRIS: The Government recalls Joseph Mauro.

21 (Witness enters and takes stand.)

22 THE COURT: You're still under oath, sir.

23 You may sit down.

24 THE WITNESS: Thank you.

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J O S E P H     M A U R O ,  
called as a witness, having been previously duly  
sworn, was examined and testified as follows:  
  
DIRECT EXAMINATION  
BY MR. NORRIS:  
Q     Good afternoon, Mr. Mauro.  
A     Good afternoon.  
Q     Now, you testified, sir, last week that you took out a  
mortgage to buy your unit at Green Tree back in the late  
1980s; is that correct?  
A     Yes, it is.  
Q     And you still owed money on that mortgage when you went  
to sell that unit in 2001; correct?  
A     Yes.  
Q     And who did you have the mortgage with at that time when  
you went to sell?  
A     When I went to sell?  
Q     Yes.  
A     It was Home -- HomeSide, I believe it was.  
Q     Okay.  
  
MR. NORRIS: I'm showing you what's been marked for  
identification as Government's Exhibit 171-A.  
  
(Handing.)

1 Q Do you recognize that?

2 A Yes.

3 Q What is it?

4 A It's a payoff statement.

5 Q A payoff statement issued by whom?

6 A HomeSide.

7 Q And who is the payoff statement issued to?

8 A Myself, Joseph Mauro, and my wife, Regina.

9 MR. NORRIS: The Government offers 171-A.

10 THE COURT: Admitted.

11 (Government's Exhibit 171-A was received in  
12 evidence.)

13 Q Now, looking at the bottom of that statement, sir --

14 MR. NORRIS: Withdrawn.

15 Q At the top of that statement, the name of the mortgage  
16 company is what, again?

17 A HomeSide Lending, Incorporated.

18 Q And at the bottom of the statement, is there an address  
19 where payments are to be sent?

20 A Yes.

21 Q And what is that address? Please, read it slowly for the  
22 record.

23 A P.O. Box 47524, San Antonio, Texas, 78265-7524.

24 Q Now, you testified last week that a couple of weeks  
25 before your closing, you got that \$47,000 assessment from the



1 Board; is that correct?

2 A That's correct.

3 Q And that was later knocked down to \$36,000 or so?

4 A That's correct.

5 Q And you had a buyer named Cryley (phonetic) or Crowley  
6 (phonetic) lined up.

7 And you were also in contract to purchase a home in  
8 Staten Island with the proceeds of the sale; correct?

9 A Yes, it is.

10 Q And you testified that you paid the \$36,000 assessment,  
11 even though you didn't think you owed it, so both sales would  
12 go through; correct?

13 A Yes, that's correct.

14 Q And when the sales went through, you paid off your old  
15 mortgage with Countryside; correct?

16 A Can you repeat that, please?

17 MR. NORRIS: Let me make sure I'm not misstating  
18 this name of this company.

19 Q HomeSide?

20 A HomeSide, yes.

21 Q And when you finished the closing on the your unit at  
22 Green Tree, you and your wife paid off your lender HomeSide;  
23 correct?

24 A Yes.

25 MR. NORRIS: No further questions.

1 MS. SHARKEY: May I see the document, please?

2 MR. NORRIS: Pardon me, maybe one question.

3 (Pause in the proceedings.)

4

5 Q And you wouldn't have been able to pay off that mortgage  
6 if you hadn't paid the assessment; correct?

7 A Correct.

8 MR. NORRIS: No further questions.

9 MS. SHARKEY: May I see the document?

10 THE COURT: Yes.

11 (Hanging.)

12 MS. SHARKEY: May I?

13 THE WITNESS: Yes.

14 MS. SHARKEY: Thank you.

15 THE WITNESS: You're welcome.

16 (Hanging.)

17 (Pause in the proceedings.)

18

19 CROSS-EXAMINATION

20 BY MS. SHARKEY:

21 Q Mr. Mauro?

22 A Yes.

23 Q You are familiar with the mortgage payoff, Government's  
24 Exhibit 171-A?

25 A Yes.

1 Q And this document solely reflects the balance on your  
2 mortgage that was paid off; correct?

3 A Yes.

4 MS. SHARKEY: Nothing further.

5 THE COURT: Thank you, sir.

6 Do you have another witness?

7 MR. NORRIS: We have three more, Your Honor.

8 THE COURT: Well, we can break now if it will take  
9 more than five minutes.

10 MR. BURLINGAME: It will.

11 MR. NORRIS: Yes, they're a little bit longer.

12 THE COURT: We'll take a break. At 1:30, you'll be  
13 back here.

14 THE WITNESS: I'm done?

15 THE COURT: You're through. Thank you, sir.

16 THE WITNESS: You're welcome.

17 (Jury is excused.)

18

19 (Continued on following page.)

20

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25

1 (The following occurs outside the presence of the  
2 jury.)

3 THE COURT: All right. Thank you.  
4

5 (Continued on following page with AFTERNOON  
6 SESSION.)  
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Goldman-Norris/direct

## A F T E R N O O N     S E S S I O N

THE COURT: Bring in the defendant. Have the witness take the stand, please.

(Jury present.)

THE COURT: Swear the witness.

L A W R E N C E     G O L D M A N ,

called as a witness, having been duly

sworn, was examined and testified as follows:

THE CLERK: State your full name and state your name for the record

THE WITNESS: Lawrence Goldman; L A W R E N C E ,  
G O L D M A N .

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. NORRIS:

Q Would you please state your name again?

A Lawrence Goldman.

Q Good afternoon.

A Good afternoon.

Q Where do you work, sir?

A U.S. Probation Department.

Q What district?

A Eastern District of New York.

Q And how long have you been with the Probation Department

Goldman-Norris/direct

1 in the Eastern District of New York?

2 A About 14 and a half years.

3 Q What is your title?

4 A Senior U.S. probation officer.

5 Q What does a probation officer do?

6 A I ensure that the orders of the court are carried out,  
7 if a defendant requires correctional treatment, I make sure  
8 they receive it and I monitor the risk a defendant poses to  
9 the community and report to the Court.

10 Q You step in after an offender has been released from  
11 prison?

12 A Correct.

13 Q What is supervised release?

14 A It's a term of supervision that follows a prison  
15 sentence.

16 Q Typically -- does it range in years?

17 A Yes.

18 Q Who imposes the supervised release?

19 A The court.

20 Q And in addition to a range of years, does the Court  
21 impose certain terms and conditions of supervised release?

22 A Yes.

23 Q What are your duties and responsibilities with regard to  
24 those terms and conditions?

25 A I meet with the offender face to face, conduct

Goldman-Norris/direct

1 interviews with them in my office, at their residence or  
2 place of employment.

3 Q In order to do what?

4 A To ensure compliance with the condition of supervision.

5 Q And do you also attempt to conduct surveillance of  
6 offenders from time to time?

7 A Yes.

8 Q What happens if you catch an offender violating the  
9 terms of his or her supervised release?

10 A A report would be completed and submitted to the Court,  
11 violation report.

12 Q And what steps is the Court permitted to take in  
13 response to a violation submitted by your office?

14 A Court has discretion, they could revoke the term of  
15 supervision, place someone back into custody, modify the  
16 conditions, extend their term of supervision, various options  
17 that the Court has.

18 Q One of those options, the offender can be placed back in  
19 prison?

20 A Yes.

21 Q Did you supervise Charles Carneglia?

22 A Yes.

23 Q Do you see him in the courtroom?

24 A Yes.

25 Q Please point him out and describe something that he's

Goldman-Norris/direct

1 wearing?

2 A A white sweater.

3 MR. NORRIS: Let the record reflect that the witness  
4 identified the defendant.

5 THE COURT: Yes.

6 Q What time did you supervise the defendant?

7 A From May 2006 to February 2008.

8 Q Now, how long was his term supposed to be?

9 A Three years.

10 Q That was the supervised release term?

11 A Yes.

12 Q What happened February of 2008?

13 A He was rearrested on new federal charges.

14 Q So the term of supervision was cut short?

15 A Yes.

16 Q You supervised him for a total of approximately 21  
17 months; is that right?

18 A Yes.

19 Q Can you estimate how many offenders you supervised over  
20 the course of your 14 and a half years with the Probation  
21 Department?

22 A Hundreds.

23 Q Hundreds?

24 A Yes.

25 Q And the offenders, do they sometimes give you a hard



Goldman-Norris/direct

1 time?

2 A They do.

3 Q Sometimes difficult to supervise offenders?

4 A Yes.

5 Q And sometimes in your experience they give you a hard  
6 time personally?

7 A Yes.

8 Q How would you characterize the defendant's level of  
9 cooperation during the period of your supervision?

10 A He was very cooperative, he wasn't rude or  
11 disrespectful, he didn't give me a hard time at all.

12 Q You got along?

13 A Yes.

14 Q He showed up at meetings when he was supposed to?

15 A Yes.

16 Q Didn't give you a hard time?

17 A Yes.

18 Q During the period of supervision, did you observe him  
19 violate the terms of the conditions of his release?

20 A No.

21 MR. NORRIS: I would ask the Court for permission for  
22 the witness to be able to look at his notes from time to time  
23 to refresh his recollection.

24 THE COURT: Yes.

25 Q Sir, did you meet with the defendant on May 3, 2006?

Goldman-Norris/direct

1 A Yes.

2 Q For what purpose?

3 A That was Mr. Carneglia's initial appointment, he was  
4 just released two days prior, just the first time I met him  
5 in my office.

6 Q And what did you review with him during that meeting, if  
7 anything?

8 A We went over the conditions of supervision, and I also  
9 gave Mr. Carneglia an association prohibition form.

10 Q What is an association prohibition form?

11 A It's a list of individuals that have been identified as  
12 being members of the Gambino crime family.

13 Q Is that a list that you compiled or someone else  
14 compiled?

15 A The FBI.

16 Q Did you meet with the defendant on May 22, 2006?

17 A Yes.

18 Q Where did you meet with him that day?

19 A At his residence.

20 Q Did he ask you for any kind of permission that day?

21 A He requested permission to attend the wake of Michael  
22 Agnello and visit a friend of his John Cavallo.

23 Q Did he say why he wanted to visit Cavallo?

24 A He was sick and he wanted to visit him.

25 Q Was John Cavallo on the permission list?

Goldman-Norris/direct

1 A Yes.

2 Q Was Mr. Agnello?

3 A Yes.

4 Q Did you grant the defendant permission to see Cavallo?

5 A No.

6 Q Did you grant the defendant permission to go the Michael  
7 Agnello wake?

8 A Yes, we normally do under conditions of that kind.

9 Q During the period of his supervision term, how often did  
10 you meet with the defendant in your office?

11 A Monthly.

12 Q During the time, did your frequency change?

13 A Yes.

14 Q To what?

15 A Every other month.

16 Q Can you estimate how many times you met with him outside  
17 the office during the period of his supervision?

18 A Approximately twice at his residence.

19 MS. SHARKEY: I did not hear the last answer.

20 A Approximately twice at his residence.

21 MS. SHARKEY: Thank you.

22 Q Approximately twice over 21 months you went to his  
23 house?

24 A Yes.

25 Q Over 21 months -- withdrawn.

Goldman-Norris/direct

1           Turning your attention to January 17, 2007. Did you  
2 meet with the defendant on that date, January 17th?

3       A     Yes.

4       Q     And did the subject of one of the defendant's friends  
5 come up that day?

6       A     Yes.

7       Q     Who was the friend?

8       A     Allen Meshanski.

9       Q     Did the defendant tell you where Allen Meshanski lived?

10      A     No -- sorry, yes, he did tell me.

11      Q     Where was that?

12      A     150-05 95th Street, Ozone Park, New York.

13      Q     Did the defendant tell you anything about  
14 Mr. Meshanski's physical condition?

15      A     Yes, he told me that he suffered from some sort of back  
16 or spine injury.

17      Q     And did the defendant tell you how old Mr. Meshanski  
18 was?

19      A     He said he was 40 years old.

20      Q     Turning your attention to April 3, 2007. Did you meet  
21 with the defendant on that day?

22      A     Yes.

23      Q     And did you ask him on that day whether he had any  
24 contact with anyone on his list?

25      A     Yes.

Goldman-Norris/direct

1 Q And he said no?

2 A That is correct.

3 Q And at this time you had been supervising the defendant  
4 for a year?

5 A Yes.

6 Q Did he have any observable sort of income?

7 A He was subsisting on life insurance policies that he was  
8 cashing in.

9 Q Did he have a job?

10 A No.

11 Q Was he able bodied?

12 A Yes.

13 Q Did the defendant tell you anything about how he manages  
14 to get by?

15 A He told me that he doesn't need money when he goes out,  
16 all of his meals and drinks are taken care of, paid for  
17 essentially.

18 Q And did he make that same statement to you on other  
19 occasions as well?

20 A Yes, he did.

21 Q How would you characterize the way in which he told you?

22 MS. SHARKEY: Objection?

23 THE COURT: You may describe what he looked like and  
24 how he said what he said.

25 A He was basically trying to convey that he was popular,

Goldman-Norris/direct

1 and he didn't have to pay for his meals and his drinks.

2 Q Turning your attention to September 19, 2007. Did you  
3 meet with the defendant on that day as well?

4 MS. SHARKEY: What date?

5 MR. NORRIS: September 19, 2007.

6 MS. SHARKEY: Thank you.

7 A Yes.

8 Q And did the defendant make statements to you on that day  
9 as well about getting free meals and drinks?

10 A Yes.

11 Q Just free meals?

12 A That is correct.

13 Q Now, you testified before that typically -- withdrawn.

14 You testified before that one of the things you  
15 sometimes do with offenders is conduct surveillance?

16 A Yes.

17 Q Did you conduct surveillance of the defendant from time  
18 to time?

19 A Yes.

20 Q Typically how did you do it?

21 A I would use a government leased vehicle and I would go  
22 to either his residence or there is a restaurant called  
23 Carosella's Restaurant in Howard Beach, New York, typically  
24 those two locations where the surveillance was conducted.

25 Q You said you would use a government leased vehicle. Did

Goldman-Norris/direct

1 you use the same car every time?

2 A For the most part, yes.

3 Q And during some of those occasions, did you observe the  
4 defendant speaking with other people?

5 A Yes.

6 Q Did you conduct any surveillance of the defendant on  
7 November 28, 2007?

8 A Yes.

9 Q Did you observe the defendant on that day?

10 A Yes.

11 Q And you mentioned a restaurant Carosella. Did you  
12 observe the defendant near Carosella that day?

13 A Yes, I did.

14 Q And when you saw him at Carosella's, typically what  
15 entrance of the restaurant would he use?

16 A It was a door to the rear of the restaurant, almost like  
17 a side door.

18 Q And did you observe the defendant meeting with anyone  
19 that day before he went to Carosella's?

20 A Yes. When I arrived at the restaurant I saw his vehicle  
21 parked on 163rd Avenue at a meter. I began my surveillance  
22 at that point. Shortly thereafter, I saw him get dropped off  
23 by a gray Mercedes, he got out of the passenger side, leaned  
24 into the window and was speaking with the driver of that  
25 vehicle at that time.

Goldman-Norris/direct

1 Q Could you observe the driver of the vehicle?

2 A Yes, the driver side window was down.

3 Q Could you describe him physically?

4 A White male, middle age, salt and pepper hair.

5 Q And he drove a Mercedes?

6 A Yes.

7 Q To correct myself, I believed you said a moment ago you  
8 saw the defendant go into Carosella's. I will ask you again,  
9 did the defendant go to Carosella's on that date?

10 A Yes.

11 Q Going back to the Mercedes, after the defendant got out  
12 of the car and you observed the driver through the open  
13 window, did you catch the license plate?

14 A I did.

15 Q Did you write it down?

16 A Yes.

17 Q And as a probation officer, do you have the capability  
18 of running license plates with the DMV to determine  
19 registration?

20 A Yes.

21 Q Did you later run the plate to determine who that car  
22 was registered to?

23 A I did.

24 Q Who did it come back to?

25 A Last name, Panzarella, Darlene, first initial A.



Goldman-Norris/direct

1 Q It wasn't a woman driving the car that day, correct?

2 A That is correct.

3 Q And did it give Panzarella's date of birth?

4 A 6/20/67.

5 Q About 40 years old at that time?

6 A Yes.

7 Q Turning your attention to January 16, 2008, did you meet  
8 with the defendant on that date, January 16th?

9 A Yes.

10 MS. SHARKEY: May I have that date again?

11 MR. NORRIS: January 16, 2008.

12 Q Let's do one more thing. In addition to seeing the  
13 defendant with this unknown male in a Mercedes, did you ever  
14 observe the defendant with anyone else?

15 A During the course of surveillance?

16 Q Yes. You are free to look through your notes if you  
17 need to.

18 A I did.

19 Q You did?

20 A Yes.

21 Q Who did you observe him meeting with?

22 A There was surveillance conducted on May 22, 2006.  
23 Unknown subject that dropped him off at his residence.

24 Q And that individual, could you describe what he looked  
25 like?

Goldman-Norris/direct

1 A That was also a white male, short hair, he was in his  
2 early to mid 30's.

3 Q Different from the male you saw the defendant with  
4 before?

5 A Yes.

6 Q Did you also catch the license plates of the car that  
7 person was driving?

8 A Yes.

9 Q Did you later run that plate as well?

10 A Yes.

11 Q What did the plate come back to?

12 A John J. Ryan.

13 Q Date of birth?

14 A October, 29, 1937.

15 Q That would have been someone who was in his late-60's,  
16 is that correct?

17 A Yes.

18 Q Different from the person you saw drive the car, fair to  
19 say?

20 A Yes.

21 Q Now, going back to January 16, 2008, did you meet with  
22 the defendant that day?

23 A Yes.

24 Q And you testified earlier that the defendant was  
25 rearrested in February of 2008; is that right?

Goldman-Sharkey/cross

1 A Yes.

2 Q Was this your last meeting with him before he was  
3 arrested?

4 A Yes, it was.

5 Q Did the defendant again talk about his ability to eat  
6 and drink for free at restaurants that day?

7 A He did.

8 Q And did the defendant also -- withdrawn.

9 Did the subject of a grand jury investigation come up  
10 that day?

11 A Yes.

12 Q What, if anything, did the defendant tell you about it?

13 A He told me that he heard that there was a grand jury  
14 convening and I asked him if he was worried and he said that  
15 he wasn't. I asked him if he had secured an attorney. He  
16 said not at this time, but he'll wait and see how it plays  
17 out.

18 Q And did he say anyone that he was considering retaining?

19 A Joseph Corozzo.

20 Q Joseph Corozzo?

21 A Yes.

22 MR. NORRIS: No further questions.

23 THE COURT: Cross?

24 MS. SHARKEY: Yes.

25 CROSS-EXAMINATION

Goldman-Sharkey/cross

1 BY MS. SHARKEY:

2 Q How are you, Mr. Goldman?

3 A Fine, thank you.

4 Q Mr. Goldman, you testified about the prohibition list?

5 A Yes.

6 Q That would be the list of the individuals that an  
7 individual on supervised release was prohibited from meeting  
8 with, right?

9 A Yes.

10 Q And you testified that that list was compiled by members  
11 of the FBI?

12 A Yes.

13 Q Is that correct? And you were familiar with the reason  
14 for the list, right?

15 A Yes.

16 Q And, in fact, the list contained the names of  
17 individuals who were associated with the Gambino crime  
18 family?

19 A Correct.

20 Q Joseph Panzarella's last name was not on the list?

21 A Yes.

22 Q John Ryan's name was not on that list?

23 A Correct.

24 Q And the reason that such a list is compiled is so that  
25 you can effectively monitor whether an inmate has been -- has

Goldman-Sharkey/cross

1 been complying with the Court's orders, once they are  
2 released, right?

3 A Correct.

4 Q And, in fact, you checked out the individuals that you  
5 saw Charles Carneglia with to make a determination as to  
6 whether or not he was in compliance with post supervision  
7 release, right?

8 A Correct.

9 Q And Panzarella wasn't a prohibited individual?

10 A Correct.

11 Q He was an individual -- that list was provided to you by  
12 FBI agents, right?

13 A Yes.

14 Q And neither was John Ryan?

15 A Correct.

16 Q Did you speak with Mr. Carneglia about those meetings?

17 A With those two individuals?

18 Q Yes.

19 A No.

20 Q Now, it was important for you to familiarize yourself as  
21 the parole officer both with Mr. Carneglia's history, his  
22 list and how he was readjusting to release from jail, right?

23 A Yes.

24 Q And that was the purpose of your meeting with him on a  
25 regular basis, right?

Goldman-Sharkey/cross

1 A Yes.

2 Q And that was the purpose of your surveilling him  
3 covertly, right?

4 A Correct.

5 Q And when we say surveilled covertly, for lay purposes,  
6 that means that you engaged in activities that Mr. Carneglia  
7 wouldn't know about so that you could make a determination as  
8 to whether or not he was in compliance, right?

9 A That is correct.

10 Q And you never violated him, right?

11 A No.

12 Q You found him to be in compliance, correct?

13 A Yes.

14 Q And you know that Mr. Carneglia lived with his elderly  
15 mother, right?

16 A Yes.

17 Q And you never violated him for eating at Carosella's  
18 restaurant?

19 A Right.

20 Q Are you familiar with that restaurant?

21 A Familiar where it's located?

22 Q Yes.

23 A Yes.

24 Q Have you ever eaten there yourself?

25 A No.

Goldman-Sharkey/cross

1 Q And when Mr. Carneglia wanted to attend the wake of Mike  
2 Agnello, he asked your permission, right?

3 A Yes.

4 Q And you testified on direct examination that that wasn't  
5 uncommon in your 15 years of experience, right?

6 A That is correct.

7 Q And wouldn't it be accurate to say that you had a  
8 conversation with Mr. Carneglia about his attendance of that  
9 wake to go early, so that he wouldn't bump into anybody else  
10 that was present, correct?

11 A Correct.

12 Q He complied with that directive, right?

13 A As far as I know.

14 Q And you were satisfied with his representation as to  
15 where he was receiving monies, right, the cancelled life  
16 insurance policies?

17 A He provided the statements to me.

18 Q So I saw those cancelled financial -- those life  
19 insurance policies, right?

20 A Yes.

21 Q And when you saw him with Allen Meshanski, you asked  
22 about his relationship with Mr. Meshanski, right?

23 A Yes.

24 Q And you checked to see if Mr. Meshanski was considered  
25 to be associated with the Gambino crime family on the

Goldman-Norris/redirect

1 prohibition list, right?

2 A Yes.

3 Q Meshanski's name is not on the prohibition list, right?

4 A Correct.

5 Q Did you ever meet with Mr. Meshanski personally?

6 A No.

7 Q Did you ever see him walking?

8 A No.

9 Q So you don't know about his physical condition, right?

10 A Not other than Mr. What carrying had told me.

11 Q And when Mr. Carneglia came under your supervision, he  
12 was 60 years old; is that right?

13 A I believe so.

14 MS. SHARKEY: Nothing further. Thank you very much,  
15 sir.

16 MR. NORRIS: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. NORRIS:

19 Q Sir, do you have the association prohibition list in  
20 front of you?

21 A I don't think that I do.

22 Q Let me give you a copy.

23 A I don't.

24 MR. NORRIS: I'll give you a copy of the association  
25 prohibition list marking it as 3500 LG 4.



Goldman-Norris/redirect

1 (Shown to witness.)

2 Q Ms. Sharkey asked you whether Allen Meshanski was on the  
3 list?

4 A Yes.

5 Q Just to confirm, he's not on a list, is he?

6 A No, he is not.

7 Q Do you see Angelo Ruggiero, Jr., on the list?

8 MS. SHARKEY: Objection; relevance. There was no  
9 question about Mr. Ruggiero?

10 THE COURT: I'll allow it. You may answer.

11 A Angelo Ruggiero, Jr.?

12 Q Yes.

13 A John Ruggiero.

14 Q John Ruggiero, no Angelo?

15 A I don't see -- no.

16 Q No?

17 A I see John Ruggiero, but not Angelo.

18 Q No Angelo Ruggiero?

19 A Not that I can see.

20 Q How about Michael DiLeonardo. Do you see him on that  
21 list?

22 A Can you repeat the name?

23 Q Michael DiLeonardo?

24 A No.

25 Q I'll help you out, try that first page?

Goldman-Sharkey/recross

1 A I'm sorry, Mikey Scars, yes.

2 Q He's on that list, yes.

3 Ruggiero is not on the list?

4 A I did not see.

5 Q You gave this list to the defendant in 2006, is that  
6 correct?

7 A Yes, May 3rd.

8 Q Do you know how often it's updated?

9 A I'm certain it probably needs to be updated, but I  
10 couldn't say how often it is updated.

11 MR. NORRIS: No further questions.

12 RECROSS-EXAMINATION

13 BY MS. SHARKEY:

14 Q Mr. Goldman, you were satisfied that Mr. Carneglia was  
15 in compliance with your rules, right?

16 A Yes.

17 MS. SHARKEY: Nothing further. Thank you.

18 THE COURT: Next witness.

19 MR. BURLINGAME: The government calls Paul  
20 Quisenberry.

21 P A U L Q U I S E N B E R R Y ,

22 called as a witness, having been duly

23 sworn, was examined and testified as follows:

24 THE CLERK: State your full name and spell it for  
25 the record

Quisenberry-Burlingame/direct

1 THE WITNESS: Paul Quisenberry;

2 Q U I S E N B E R R Y.

3 DIRECT EXAMINATION

4 BY MR. BURLINGAME:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q What do you do for a living?

8 A I'm a special agent with the Federal Bureau of  
9 Investigation.

10 Q When did you join the FBI?

11 A June 3, 1990.

12 Q What did you do before that?

13 A Came straight from law school. University of Arkansas.

14 Q What was your first assignment with the FBI?

15 A I was first assigned to a squad that worked primarily  
16 civil rights investigations.

17 Q What does that mean?

18 A Mostly allegations of police brutality, police  
19 shootings, covers also hate crimes, and other things like  
20 that.

21 Q How long did you do that for?

22 A That was only for six months.

23 Q What did you do after that?

24 A I was assigned to a squad that worked Italian organized  
25 crime, specifically the Gambino family.

Quisenberry-Burlingame/direct

1 Q And how long did you work on the Gambino squad?

2 A About six and a half years.

3 Q What did you do after that?

4 A I transferred to another squad which did interstate  
5 transportation of stolen property, primarily art and jewelry  
6 theft.

7 Q How long there?

8 A Around two years.

9 Q What after that?

10 A In September of 1999 I transferred to the New Orleans  
11 division of the FBI.

12 Q What did you do down in the New Orleans division?

13 A For the first year and a half or so I worked organized  
14 crime.

15 Q And then after that?

16 A After that did I civil rights.

17 Q The same sort of stuff, police brutality?

18 A Yes.

19 Q How long did you stay in New Orleans?

20 A Seven years.

21 Q When did you come back -- what did you do after that?

22 A I returned back to the New York division in December of  
23 2006.

24 Q What have you done since then?

25 A I came back, from that time to now I was assigned to a

Quisenberry-Burlingame/direct

1 squad -- that's how we break down squads, 8 to 12 people  
2 assigned to a squad special operations branch. We generally  
3 abbreviate it as SO, specifically SO 3.

4 Q What does SO 3 do?

5 A Surveillance.

6 Q Is there a focus on any particular kind of crime?

7 A No, it's prioritized by the bosses basically and  
8 whatever is the thing of the day. Our squad specifically  
9 tends to work a lot more organized crime matters than most.

10 Q When you say organized crime, were you talking about  
11 traditional organized crime, Mafia?

12 A Yes.

13 THE COURT: When you say bosses what do you mean?

14 THE WITNESS: The supervisor. We have -- there is a  
15 coordinating supervisor who sees all of the requests that  
16 come in from the different agencies that we are working with  
17 and they have so many teams, so many requests and prioritize  
18 them. Typically now that is terrorist related, Homeland  
19 Security related gets the higher priority.

20 Q How many people in special operation surveillance teams?

21 A Right now there are ten of us on the squad.

22 Q Were you all assigned to surveil the same thing on the  
23 same day?

24 A Yes.

25 Q And please take the jury through what a typical day in

Quisenberry-Burlingame/direct

1 SO 3 would look like?

2 A For instance, when we were surveilling Mr. Carneglia,  
3 for instance, get out of the residence, given a package from  
4 the case agent, agent who is back in the office, who asked us  
5 for assistance, sort of their eyes and ears on the street, we  
6 think he gets up and leaves 8:00 or 9:00, this is where he  
7 lives, this is his car, we will get out there, 5:00, 6:00  
8 whatever time you need to get there ahead, try to identify  
9 the vehicle coming out of the neighborhood, I identify who is  
10 driving and basically follow and try to document any people,  
11 the places, any other vehicles, either written log or taking  
12 videotape or pictures that we can get back to the case agent  
13 to help them with their investigation.

14 Q And the whole team would participate in those  
15 investigations?

16 A Yes.

17 Q Why would you need so many people to surveil one guy?

18 A It's just a lot easier. It's very difficult with less  
19 than really five or six, because the same car, you're in  
20 tight neighborhood, to rotate cars around and just the  
21 nature, the more the better.

22 Q There is a worry that you would identified?

23 A Yes.

24 Q That is the reason for switching back and forth?

25 A Yes.

Quisenberry-Burlingame/direct

1 Q You testified that you conducted surveillance of the  
2 defendant. In what period did that take place?

3 A From -- it was 2007 from August until sometime in  
4 December, over like a four month period.

5 Q And did you take photographs or videos when you take  
6 surveillances?

7 A Try as much as you can.

8 Q And did you take photographs or videos of the defendant?

9 A Yes.

10 Q Did the defendant establish any patterns -- how many  
11 days during that time period did you conduct surveillance of  
12 the defendant?

13 A 25.

14 Q 25 days of surveillance?

15 A Yes.

16 Q And during those 25 days, did the defendant establish  
17 any patterns?

18 A The biggest pattern on 16 of the 15 days, I believe it  
19 is, he went to Carosella's Restaurant, which is at 163rd  
20 Street and Cross Bay Boulevard. I think I know the address,  
21 162-54 Cross Bay Boulevard. He would go from the residence  
22 or after going to get gas, but end up most days, 16 out of 25  
23 stopping there and going in.

24 Q How long would he typically spend at Carosella's?

25 A It depended, sometimes show-up look around and back into

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1 the car and leave. Other times, you know, as of May 30th,  
2 11:00 in the morning, go in, when our shift ended at 2:00 or  
3 2:30 still hadn't come out.

4 Q Did you observe him meeting with various people at  
5 Carosella's?

6 A Yes.

7 Q Where would he typically meet with them?

8 A There is a bench on the sidewalk, sometimes talking to  
9 people, but there is a rear parking area at Carosella's, off  
10 of 163rd Street, which appears to be a valet lot in the  
11 evenings, but back in that sort of lot area, smoking a  
12 cigarette talking to people.

13 Q When he would go into Carosella's, would he use the  
14 front door?

15 A I don't think I ever saw him use the front door. It  
16 didn't appear at that time that the front door was much in  
17 use, there wasn't a lot of foot traffic at all in the front  
18 door.

19 Q Did you ever send anyone into Carosella's to try to  
20 establish surveillance of the defendant inside?

21 A No.

22 Q And do you know why?

23 A The decision --

24 MS. SHARKEY: Objection.

25 THE COURT: I will allow it. You may answer.



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1 A It was the decision by the team leader that because of  
2 what we saw, didn't see a lot of foot traffic, it wasn't a  
3 McDonalds or Burger King with people coming and going, there  
4 were very few people during lunchtime and seemed to be  
5 everyone knew each other, seemed to be neighborhood people,  
6 in greeting and talking and the risk of being identified or  
7 raising suspicion seemed to outweigh any advantage that we  
8 saw to it. Just didn't seem it was going to work basically.

9 Q And you testified that SO 3 took photographs and videos  
10 during the surveillance, correct?

11 A Yes.

12 Q In preparing for your testimony today, did you review a  
13 compilation tape containing segments of the videos?

14 A Yes, I did.

15 Q Did you also review a CD containing certain surveillance  
16 pictures?

17 A Yes.

18 Q Showing you what is marked Government Exhibit 343 and  
19 344.

20 (Shown to witness.)

21 Do you recognize those.

22 A Yes, I do.

23 Q What are they?

24 A They are CDs, one of compilation on five different dates  
25 of five different video surveillance and a CD with

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1 photographs from one day.

2 Q And you reviewed these CDs?

3 A Yes.

4 Q How do you know these are the ones that you reviewed?

5 A They have my initials on them.

6 MR. BURLINGAME: Move to admit Exhibits 343 and 344.

7 THE COURT: Admitted.

8 Q When you conduct surveillances do you-- when SO 3

9 conducts a surveillance, do they take notes?

10 A Yes.

11 Q And are those notes later compiled into a surveillance  
12 log?

13 A Yes, they are.

14 Q Did you review surveillance logs concerning the dates  
15 that the videos were taken and these photographs were taken?

16 A Yes, I did.

17 MR. BURLINGAME: Your Honor, I ask that the agent be  
18 able to refer to his notes to refresh his recollection as we  
19 go through the tapes.

20 THE COURT: Yes.

21 MR. BURLINGAME: I will need to move the video  
22 screen around to in front of the jury.

23 THE COURT: Are these on a specific date or over a  
24 period of time?

25 MR. BURLINGAME: The videos are five separate dates

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1 and the photographs are from one day.

2 THE COURT: What's the date?

3 MR. BURLINGAME: The photographs are from  
4 November -- sorry, November 20, 2007, and the surveillance  
5 videos are from October 15th, November 2nd, October 30th,  
6 November 20th and December 2nd all of 2007.

7 THE COURT: While we're getting that setup, why  
8 don't you take ten minutes, please, ladies and gentlemen.

9 (Jury leaves courtroom.)

10 THE COURT: The defendant has into the seen this  
11 before?

12 MS. SHARKEY: I would like to see them before  
13 they're shown. If these are the stills that we received  
14 those, we never received the video and we never received any  
15 surveillance logs, we'd like an opportunity to see it before  
16 it's shown to the witness.

17 MR. BURLINGAME: She has received all of it in  
18 discovery.

19 THE COURT: Let's show it to them. Show everything.

20 MS. SHARKEY: Can we see the logs as well, so that  
21 we do not waste too much time.

22 THE COURT: Mark them with a number, please. What  
23 number are you assigning?

24 MR. BURLINGAME: Government Exhibit 3500 PQ 1, and  
25 if we refer to documents within we will make them A, B, and

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1 C.

2 MS. SHARKEY: We never received these.

3 MR. BURLINGAME: I believe that is incorrect.

4 THE COURT: Proceed.

5 Do you want to get up and indicate who is on the  
6 screen.

7 A That is Mr. Carneglia. Michael -- Carosella's is off to  
8 your right. That's the rear parking area. This is on  
9 Lefferts Boulevard at Don Peppe's Restaurant, South Ozone  
10 Park.

11 Q Who does that license plates number come back to?

12 A To Darlene Panzarella.

13 Q Who does she live with?

14 A Joseph Panzarella.

15 THE COURT: Who is that man.

16 A That was Mr. Carneglia. That's Mr. Carneglia once  
17 again, and again that is the rear parking area. He's walking  
18 north on Cross Bay and talking to the gentleman in the black,  
19 approaching 163rd Street, rear of Carosella's. This is the  
20 defendant once again with a male unidentified to us on Sutter  
21 Avenue and Crescent Street. They met and spoke for about 30  
22 minutes and got into their individual cars and drove away.  
23 This is continuation of the same.

24 MS. SHARKEY: Could you keep your voice up?

25 A This is the Waterview Diner about a block from

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1 Carosella's to the south between 163rd and -- near 163rd the  
2 Waterview Diner on Cross Bay. Leaving the diner with that  
3 gentleman who is unknown to us.

4 MR. BURLINGAME: Judge, there is testimony in the record  
5 about Carosella's and the Waterview Diner associated with the  
6 Gambino family. In the still photographs, also covering the  
7 video, unidentified male, as far as I know on Sutter Avenue,  
8 vicinity of Crescent Street. It was a rainy day,  
9 Mr. Carneglia drove over there, they met, sat around and  
10 talked for about 30 minutes, got into their individual cars  
11 and left.

12 Q All five pictures are from the same day?

13 A Yes.

14 MR. BURLINGAME: That's all.

15 THE COURT: That is it?

16 MR. BURLINGAME: Yes.

17 THE COURT: Take another five and we will continue.

18 MS. SHARKEY: Judge, we have seen the stills, prior  
19 to today we have not seen that video montage, nor did we  
20 receive it in evidence. The defense objects to its entrance  
21 into evidence. We believe it's a violation of Rule 16. The  
22 first time seeing it when this witness hits the stand  
23 certainly is unfair.

24 Additionally, if there is no indicia on the styles,  
25 other than the defendant standing on the street or standing

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1 in a doorway, there appears to be no relevance to the  
2 entrance of this -- these documents into evidence.

3 If there is some sort of link as to relevance, I  
4 would ask that the Court direct the prosecution to make that  
5 offer of proof, but we had not seen the video, we have not  
6 received these line sheets. Sitting next to me is our  
7 paralegal who has indexed it as it was coming up. I was  
8 surprised at this witness being called. His name does not  
9 appear. We have no 3500 for this witness.

10 MR. BURLINGAME: The witness was originally  
11 identified as Brian Cope who is another member of SO 3. The  
12 video surveillance were turned over in discovery, 418 through  
13 424 on December 10, 2008. I believe defense might be correct  
14 that I neglected to provide those five reports as 3500 for  
15 this witness, and I apologize, that is my mistake, I believe  
16 the entirety of the surveillance -- of the surveillance  
17 reports were produced, but again I'm not sure. All I know the  
18 surveillance videos themselves were produced.

19 THE COURT: Are you going to identify the  
20 unidentified person?

21 MR. BURLINGAME: No.

22 THE COURT: Motion denied.

23 There is no prejudice to the defendant. Take five  
24 and then we will continue with the jury.

25 (Recess taken.) (Followed on next page.)

1 (In open court.)

2 THE COURT: The jury can come in.

3 MR. BURLINGAME: So, Judge, what we're going ask to  
4 do -- sorry -- since the video clips are so short is to go  
5 through them once, just allow them to play and let the jurors  
6 see them once. And then, go through them again and pause them  
7 and ask him to explain them.

8 THE COURT: Yes, you may.

9

10 (Continued on following page.)

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1 (Jury enters.)

2 (The following occurs in the presence of the jury.)

3 THE COURT: Sit down, please.

4 MR. BURLINGAME: Judge, permission to publish the  
5 Exhibits and to have the, ask the witness to step down and  
6 explain them.

7 THE COURT: Granted.

8 MR. BURLINGAME: Okay.

9 Q Special Agent Quisenberry --

10 MR. NORRIS: I think we'll just play them once,  
11 actually, Judge.

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY MR. BURLINGAME: (Continued)

15 MR. BURLINGAME: I'm going to ask Ms. Moore to pause  
16 them on occasion and we will just explain where we are and who  
17 is who in the videos.

18 Q Okay?

19 A Okay.

20 (Video played for jury.)

21

22 Q So, what's this building here?

23 A This is Carosello's Restaurant.

24 Q Is this the front or back?

25 A The rear. This is the rear.



1 Q And who is the gentleman in the orange shirt?

2 A Mr. Carneglia. Charles Carneglia.

3 MS. SHARKEY: Mr. Burlingame, the juror can't see.

4 Q Is this typical of what you were describing? You would  
5 observe the defendant hanging around behind Carosello's?

6 A Yes.

7 Q And I see a gentleman with a bald head and a black shirt  
8 just came out?

9 A Right.

10 Q So, this would be one of the meetings behind Carosello's  
11 you were discussing?

12 A Yes.

13 Q Do you know what day this is from?

14 A I believe it's October 15th, 2007.

15 Q There was another individual just came through the --

16 MR. BURLINGAME: Could you pause it a second,  
17 please? If you could rewind just a little, okay?

18 Q There was another individual that came by with a cane and  
19 a black sweat jacket?

20 A Yes.

21 Q Were you able to identify either of the people he was  
22 meeting with that day?

23 A No, I was not.

24 MR. BURLINGAME: Thanks. You can pause it.

25 (Video played for jury.)

1 A And this clip is from November 2nd, 2007. It's Charles  
2 Carneglia in front of Don Pepe's restaurant.

3 Q What's this? There's a gray Mercedes here.

4 Were you able to get the license plate?

5 MR. BURLINGAME: Could you pause for a second,  
6 Ms. Moore?

7 A Yes, we were.

8 Q And you were able to get that license plate number?

9 A Yes.

10 Q Did you run the plate?

11 A Yes. We ran the plate and it came back to a Darlene  
12 Panzarella with an address in Nassau County.

13 Q Okay. And were you able to determine who else lived at  
14 that address?

15 A Yes. Through a public source online, on the Internet,  
16 checked with -- the same residence is also a Joseph E.  
17 Panzarella.

18 Q Okay.

19 MR. BURLINGAME: You can continue.

20 (Video played for jury.)  
21

22 A And that's the vehicle. As I said, it's in front of  
23 Don Pepe's restaurant on Lefferts Boulevard in South  
24 Ozone Park.

25 Q And that's the defendant standing next to the Darlene

1 Panzarella vehicle?

2 A Yes.

3 MR. BURLINGAME: Would you pause for one second.

4 Q Were you able to see the driver of that vehicle that day?

5 A No.

6 MR. BURLINGAME: Thank you. Continue.

7 (Video played for jury.)

8

9 A Once again, this is the back of, the rear of Carosello's.  
10 Mr. Carneglia and this unknown gentleman are walking down the  
11 street talking. They've come from the Waterview Diner, which  
12 is a few doors down to the south, and they're preparing to  
13 cross 163rd Street, which leads to the rear instance of  
14 Carosello.

15 Q And that was Mr. Carneglia in the white shirt and the  
16 gentleman he was talking to in the black shirt?

17 A Yes.

18 Q Were you able to identify the gentleman he was talking  
19 to?

20 A No.

21 MR. BURLINGAME: Please, continue.

22 (Video played for jury.)

23

24 Q Where are we here?

25 A This is on Sutter Avenue near Cresson Street, about a

1 five-minute drive from -- five- or six-minute drive from  
2 Mr. Carneglia's residence. And he, Mr. Carneglia, met with  
3 this, this gentleman with the black hat.

4 They met. They spoke out on the sidewalk for around  
5 30 minutes. They got into their individual -- I think on the  
6 video, they each get into their own cars and went their  
7 separate ways.

8 Q And so, SO-3 would have followed him to this location,  
9 observed him while he was meeting with this unidentified  
10 man --

11 A Yes. And he got the license plate off of that vehicle,  
12 but it didn't come back to -- a lot of times we don't know  
13 what happens.

14 We get the information, we get the videos, we get  
15 the things, and we hand them back to the case agent, the  
16 person in the office who knows the cases. We don't know the  
17 ins and outs of them. We work on one thing one day and  
18 another thing another. And so, we give that to him, the  
19 license plate information and all that, and maybe something  
20 comes back and maybe it doesn't.

21 Q Okay.

22 A On this case we were never told this person is this  
23 person, so next time you can put his name on it. So, that's  
24 how it works.

25 Q Okay.

1                   And now, this clip. Where are we now?

2     A     This is the Waterview Diner, which is about a half block  
3     down from Crossbay Boulevard, from Carosello's.

4                   And this gentleman, Mr. Carneglia, is on the  
5     passenger side. And the other gentleman, they've gone into  
6     the diner. They were in there for some period, I'm not sure  
7     how long, I don't remember. And then, they walk back to the  
8     vehicle.

9     Q     And okay. And that was Mr. Carneglia in the blue jacket  
10    with the white stripe on the shoulder?

11    A     Yes.

12    Q     And the other individual had a black jacket?

13    A     Yes.

14    Q     What date was that clip from? Would you like to check  
15    your notes?

16    A     I believe it's, I believe it's one -- I know it was  
17    December 12th.

18                   (Pause in the proceedings.)

19    A     December 12th, 2007.

20    Q     Okay. And then, do you also have still photographs from  
21    one of the days of surveillance?

22    A     Yes.

23                   MR. BURLINGAME: Okay. Ms. Moore, if you could  
24    switch over to the photograph CD.

25                   (Pause in the proceedings.)

1 Q And you said this is still photographs from one of the  
2 days that we already talked about.

3 Which day was this?

4 A One moment. They're not in date sequence.

5 This was November 20th, and it was when the video --  
6 it was the same video. This is on Sutter Avenue right off of  
7 Cresson Street. It was on the video before, the gentleman,  
8 that's the black hat, dark hat, dark jacket. Mr. Carneglia is  
9 standing there.

10 Q And you testified that on this day you followed him five  
11 or six minutes from his house. He stopped here and met with  
12 this man for about a half-hour and then they both left in  
13 separate cars?

14 A Correct.

15 Q Okay. If you could just flip through the rest of the  
16 photos.

17 Same two individuals?

18 A Correct.

19 Q Now, when you followed the defendant, was there any, did  
20 he ever do anything strange that appeared to you like he might  
21 be being surveillance conscious?

22 MS. SHARKEY: Objection as to form.

23 THE COURT: Overruled.

24 A Nothing that would seem overt or, I don't know, you say  
25 amateurish, like out of a movie that would seem like, no

1 squaring the block again and again and again or a lot of  
2 looking around, but some behavior that could have been --

3 MR. FARBER: Objection to what "could have been."

4 THE COURT: Just describe the behavior.

5 THE WITNESS: Okay.

6 THE COURT: Don't characterize it.

7 THE WITNESS: Okay.

8 A For instance, well, from his residence, which is on a  
9 one-way going south, he would back up and come the quarter  
10 block to the north, the wrong way on a one-way, which may just  
11 be a shortcut or it may just be a way to look because I know  
12 when we first -- doing that, and again, I'm going to say  
13 that's a judgment. It's -- I don't know the word. It's  
14 subjective whether that was something or not.

15 And then on another occasion, cleaning the car,  
16 dusting the car for an extended period of time for  
17 20-30 minutes, which could also be a way of looking around.  
18 Driving up Crossbay Boulevard a certain distance. Then,  
19 basically making a U-turn and coming back to where he started.

20 He just, it's subjective, but those type of things  
21 makes you think a little maybe we should back off a little  
22 maybe. It may be something, if that makes sense.

23 Q So, nothing amateurish, but some things that raised  
24 suspicion with you?

25 MS. SHARKEY: Objection.

1 MR. FARBER: Objection.

2 THE COURT: Sustained.

3 MR. BURLINGAME: I have -- nothing further.

4 MS. SHARKEY: One second, please.

5 You can take a seat.

6 THE WITNESS: Thank you.

7 (Pause in the proceedings.)

8

9 THE COURT: Did you submit 3500-LG-4?

10 MR. BURLINGAME: No, Judge. It was just for the  
11 witness to refresh.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 BY MS. SHARKEY:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q You testified that you were involved in the surveillance  
18 of Mr. Carneglia; is that correct?

19 A Yes, ma'am.

20 Q What period of time was that?

21 A The, it was sometime in late, I'm trying to remember.  
22 August until around the middle of December.

23 Q August '07 to December '07?

24 A August '07, yes, yes.

25 Q And that would be about four months? Five months?



1 A Yes.

2 Q Isn't that correct?

3 A Yes.

4 Q And you testified on direct examination that when you  
5 took pictures or took surveillance, I guess surveillance  
6 photos; right?

7 A Yes, ma'am.

8 Q You would give those photos to the case agent --

9 A Yes.

10 Q -- on the case?

11 A Yes.

12 Q And it would be accurate to say that well --

13 MS. SHARKEY: Withdrawn.

14 Q Were you involved in the five-month surveillance?

15 A Yes.

16 Q You and other members of your team?

17 A Yes.

18 Q And in order for your surveillance to be effective, you  
19 needed to know what you were looking for; right?

20 A Yes.

21 Q So, when you took video surveillance or stills, you would  
22 show those photos to case agents; right?

23 A Yes.

24 Q And those weren't the first snapshots of the individuals  
25 who were depicted; were they?

1 A In some cases they may well have been. It might have  
2 been just once that he met with the -- the defendant met with  
3 these people.

4 Q You testified on direct examination that you were never  
5 told that the photos that you had taken were of value; right?

6 A Correct.

7 Q The case agents never said, aha, go back and make sure  
8 you follow this guy and look for this guy again; right?

9 A The only thing like that, was --

10 Q Yes or no, please.

11 A Well, then I would have to say -- let me think.

12 THE COURT: You can say, 'I can't answer it in that  
13 form.'

14 THE WITNESS: I just don't remember the beginning of  
15 the question.

16 THE COURT: Re-frame it.

17 THE WITNESS: I'm sorry.

18 Q The photos that you've just shown to the jury were given  
19 to the case agents; right?

20 A Correct.

21 Q And were you directed to look for those individuals  
22 again?

23 A No.

24 Q And were those individuals identified for you as anyone  
25 of interest in the Gambino Crime Family?

1 A No.

2 Q And when you say you do surveillance, sir, and you make a  
3 subjective decision as to, or a subjective opinion as to  
4 whether or not someone is conscious or trying to elude  
5 surveillance, that's something that you've concluded in your  
6 own mind; right?

7 A Correct.

8 Q And in fact, wouldn't it be accurate to say that members  
9 or that yourself would consider somebody driving very fast may  
10 be attempting to evade surveillance? Right?

11 A Yes.

12 Q And that same person may be driving very slow, and they  
13 may be attempting to evade surveillance; right?

14 A Yes.

15 Q So, absolutely anything you see an individual do is  
16 subject to two inferences; fair enough?

17 A Fair.

18 Q And it's your testimony that because Mr. Carneglia  
19 frequently washed his car, you thought that that was an  
20 attempt to evade surveillance?

21 A (No verbal response.)

22 Q Yes or no, if you can.

23 A Well, I can't answer in that form. To take...

24 Q Did you see Mr. Carneglia wash his car?

25 A Yes.

1 Q Did you testify on direct examination that you suspected  
2 that washing the car was an attempt to evade surveillance?

3 A It could be.

4 Q And it could be an old guy washing his car; right?

5 A Yes.

6 Q And this Carosello Restaurant; right?

7 A Yes.

8 Q That's a big restaurant on Crossbay Boulevard; right?

9 A Yes.

10 Q And Carosello Restaurant is a family restaurant; right?

11 A My understanding, yes.

12 Q It has video games inside; right?

13 A Yes.

14 Q A lot of family parties are conducted there; right?

15 A Yes.

16 Q And when I say "family," I mean any individual. I don't  
17 mean that with any organized crime connotation; right?

18 A Yes.

19 Q And when Mr. Burlingame asked you if Mr. Carneglia used  
20 the front door, you testified that the front door really  
21 wasn't in use; correct?

22 A Yes.

23 Q And Carosello Restaurant is four or five blocks from  
24 where Charles Carneglia was living with his 90-year-old  
25 mother; right?

1 A Yes.

2 Q And the Waterview Diner is how many blocks from  
3 Carosello?

4 A Half a block.

5 Q So, Carosello and the Waterview Diner are neighborhood  
6 eateries; right?

7 A It would appear -- it seems so, yes.

8 MS. SHARKEY: Nothing further. Thank you.

9 THE WITNESS: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BURLINGAME:

12 Q You testified you were on the Gambino Squad for how long?  
13 About seven years?

14 A Almost seven years, yes.

15 Q During that period, did you ever have any trouble  
16 identifying anyone who was meeting with made members of  
17 organized crime?

18 A Yes.

19 Q Now, Ms. Sharkey asked you if absolutely everything that  
20 anyone does is subject to two interpretations.

21 And one of the things that you testified on direct  
22 you observed Mr. Carneglia do was pull out of his driveway and  
23 drive the wrong way down a one-way street?

24 A Yes.

25 Q And that he would then proceed for certain direction in

1 one -- along a certain course and then reverse and come back  
2 to exactly where he started and get out of his car?

3 A Yes.

4 MS. SHARKEY: Objection as to form.

5 THE COURT: You may enquire.

6 A Yes.

7 Q And those are the things you are saying could be subject  
8 to multiple interpretations?

9 A Yes.

10 Q Okay. Now, when you -- Ms. Sharkey asked you about  
11 Carosello's being a family restaurant.

12 When you saw the defendant there, were there a lot  
13 of kid's parties going on?

14 A No.

15 Q A lot of kids coming in and out of the restaurant?

16 A No.

17 Q Okay. The people he was meeting with, which door did  
18 they use?

19 A The rear door.

20 Q Okay. Did any people use the front door?

21 A Not that I remember seeing at all, but we focused where  
22 he was on the rear, in the rear.

23 Q Okay. And you testified that there weren't many people  
24 coming in and out of Carosello's when you were watching.

25 A Correct.

1 Q Is it fair to say it wasn't -- business wasn't booming at  
2 Carosello's?

3 A Not at that time.

4 Q And this is the restaurant that you thought that FBI  
5 agents couldn't go into because you would be worried about  
6 blowing your cover; correct?

7 A Correct.

8 Q And just explain to the jury; Ms. Sharkey asked you some  
9 questions about an old man washing his car.

10 What exactly would he do when he was quote, unquote  
11 "washing his car?"

12 A Well, it was more of a, a dusting. We were a long way  
13 away, we were using binoculars but more of like, dusting  
14 pollen or something off of the car. But everything from  
15 opening the driver's side door to stand on the, basically, the  
16 floor of the car to do up on the roof of the vehicle, the  
17 back. Cleaning it just all over, completely all over, 360  
18 around and on top of the car.

19 Q Okay. So, there's no hose involved in this?

20 A No.

21 Q He would get out and dust his car before driving around?

22 A Some days.

23 Q And I believe you testified on direct that that would  
24 give him an opportunity to look around; correct?

25 MS. SHARKEY: Objection.

1 Q I believe you testified on direct that that would give  
2 him an opportunity to look around; correct?

3 MS. SHARKEY: Objection.

4 THE COURT: I'll allow it.

5 A Correct.

6 Q I believe you testified on direct that that would give  
7 him an opportunity to look around; correct?

8 A Correct.

9 MR. BURLINGAME: No further questions.

10 MS. SHARKEY: May I re --

11 THE COURT: No, we've had enough.

12 Next witness, please.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 MS. SEIFAN: Your Honor, at this time we want to  
16 play two calls between John Carneglia and Charles Carneglia.  
17 The parties have already stipulated to the authentication of  
18 these calls.

19 THE COURT: You may.

20 MS. SEIFAN: I just want to move to admit  
21 Government's Exhibit 230-A.

22 THE COURT: Yes.

23 (Government's Exhibit 230-A was received in  
24 evidence.)

25 MS. SEIFAN: And we have transcripts as well.



1 MS. SHARKEY: Could we have that removed? Unless  
2 it's being used.

3 MS. SEIFAN: For the next witness we're going to  
4 need it.

5 MS. SHARKEY: Okay. No objection.

6 MS. SEIFAN: Your Honor, we also have transcripts of  
7 these calls.

8 THE COURT: Yes.

9 MS. SEIFAN: They're identified as Government's  
10 Exhibit 230T-13.

11 THE COURT: C?

12 MS. SEIFAN: T as in Tom.

13 THE COURT: T.

14 MS. SEIFAN: Dash, 13. And 230T, as in Tom, dash,  
15 12.

16 THE COURT: All right. The transcripts are admitted  
17 for purposes of assisting the jury.

18 (Government's Exhibits 230T-13 and 230T-12 were  
19 received in evidence.)

20 THE COURT: 230-A is in.

21 (Pause in the proceedings.)

22

23 MS. SEIFAN: Your Honor, there are several  
24 transcripts in there in the binders we're handing out because  
25 we're going to use them later on. So, I'm just going to

1 direct the jury to focus on the last two transcripts.

2 THE COURT: Yes.

3 Don't look at anything until you're told to, please.

4 MS. SEIFAN: Don't look at anything prior to the  
5 last two transcripts, 230T-13 and 230T-12. And they relate to  
6 a November 5th, 2006, call.

7 (Pause in the proceedings.)

8  
9 MS. SEIFAN: So, the first call we're going to  
10 play --

11 THE COURT: I don't see 230T-12.

12 MR. FARBER: It's out of order, Judge. It's  
13 actually the --

14 MS. SEIFAN: It's the last one, Judge.

15 THE COURT: 230T-13?

16 MS. SEIFAN: Yes.

17 THE COURT: You all have it? It's the last two.

18 THE JURY: Yes.

19 MS. SEIFAN: Okay. So, the first call we're going  
20 to play is the last transcript in the binder, 230T-12. It's  
21 dated November 27th -- it says 2007, it's actually 2006 --  
22 4:35 p.m., between John Carneglia and Charles Carneglia. It's  
23 the last transcript in the binder.

24 THE COURT: You're playing which one first?

25 MS. SEIFAN: November 27th. The 230T-12, the last

1 transcript in the binder.

2 THE COURT: All right.

3 (Pause in the proceedings.)

4

5 MS. SEIFAN: So, this call is between Charles  
6 Carneglia and John Carneglia.

7 (Audio played for jury.)

8

9 MS. SEIFAN: Now, we're going to play 230T-13. The  
10 call is dated November 5th, 2006, at 2:29 p.m., and it's  
11 between Charles Carneglia and John Carneglia.

12 Just, it's the transcript right before the last  
13 transcript you looked at.

14 Is everyone on the right one?

15 THE JURY: Yes.

16 (Audio played for jury.)

17

18 MS. SEIFAN: The Government calls Walter Obando.

19 (Witness enters and takes stand.)

20 THE COURTROOM CLERK: Please, raise your right hand.

21 **W A L T E R O B A N D O,**

22 called by the Government, having been

23 first duly sworn, was examined and testified

24 as follows:

25

1 THE COURTROOM CLERK: You may be stated. Please,  
2 state and spell your name for the court reporter.

3 THE WITNESS: Walter Obando -- O-B-A-N-D-O.

4 DIRECT EXAMINATION

5 BY MS. SEIFAN:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Mr. Obando, who do you work for?

9 A I work at MDC Brooklyn. It's a Federal Bureau of Prisons  
10 facility located here in Brooklyn, New York.

11 Q What does the MDC stand for?

12 A Metropolitan Detention Center.

13 Q What is your title?

14 A Special investigative technician.

15 Q What does a special investigative technician do?

16 A At office investigations at MDC Brooklyn we conduct  
17 investigations regarding inmate misconduct such as fights,  
18 assault, drug usage, narcotics trafficking. We monitor the  
19 inmates' -- randomly monitor the inmates' phone conversations.  
20 We monitor their incoming and outgoing mail and we serve as a  
21 liaison between the institution and various law enforcement  
22 agencies.

23 Q So, some of your duties and responsibilities include  
24 responding to subpoenas for inmate information?

25 A Yes.

1 Q And are you familiar with the various documents that are  
2 contained in an inmate's file?

3 A Yes.

4 Q What are some of those documents?

5 A Some of the documents might contained in an inmate's  
6 central file might be intake information forms that an inmate  
7 fills out upon entrance to the MDC; his visitor list, phone  
8 list, separation orders, which details the inmates that are  
9 supposed to be separated from the individual inmate.

10 Q And in the course of your duties you review the inmate's  
11 Bureau of Prisons file?

12 A From time to time, yes.

13 Q Is it fair to say that the documents or the forms in  
14 those files are standard throughout the Bureau of Prisons  
15 system?

16 A Yes.

17 Q How long have you worked at the MDC?

18 A Twelve years.

19 Q You stated one of the things you do is monitor, you  
20 randomly monitor inmate telephone calls?

21 A Yes.

22 Q How does the telephone system at the MDC work?

23 A The system is called Tru Phone. It's a computerized  
24 system that the inmate phone conversations are stored via hard  
25 drive.

1 Q Are there telephones located in each unit?

2 A Yes.

3 Q And how many units are there at the MDC?

4 A Approximately, over 28 Housing units at the MDC.

5 Q Are you able to monitor each and every call that an  
6 inmate makes?

7 A No.

8 Q But are each and every one of the inmates' calls  
9 recorded?

10 A Yes.

11 Q Is there a way to retrieve those calls --

12 A Yes.

13 Q -- that are recorded?

14 A Yes.

15 Q How are they retrieved?

16 A Normally, through a subpoena or through our database  
17 system. We can retrieve the calls and download them on CD or  
18 bring the call up. That way we can listen to it.

19 Q Okay.

20 MS. SEIFAN: I'm going to show you a series of  
21 documents. I'll start with, I'm showing you what's been  
22 marked for identification as Government's Exhibit 228.

23 (Hanging.)

24 Q Can you take a look at that?

25 A Yes.

1 Q What is it?

2 A It's an Inmate Quarters History for inmate Anthony  
3 Ruggiero, Junior.

4 Q Is this document kept in the ordinary course of business?

5 A Yes.

6 MS. SEIFAN: Your Honor, I move to admit  
7 Government's Exhibit 228.

8 THE COURT: It's admitted.

9 (Government's Exhibit 228 was received in evidence.)

10 MS. SEIFAN: I'm showing you what's been marked for  
11 identification as Government's Exhibit 227.

12 (Hanging.)

13 Q Take a look at that.

14 A Yes.

15 Q Do you recognize it?

16 A Yes.

17 Q What is it?

18 A It's a Visitor Information Form for inmate John Alite.

19 Q Is that document kept in the ordinary course of business?

20 A Yes.

21 MS. SEIFAN: Your Honor, I move to admit  
22 Government's Exhibit 227.

23 THE COURT: Admitted.

24 (Government's Exhibit 227 was received in evidence.)

25 MS. SEIFAN: Okay. Now, I'm going to show you a

1 series of documents. They're not in numerical order, so I'll  
2 go slowly.

3 I'm showing you what's been marked for  
4 identification as Government's Exhibit 190.

5 (Hanging.)

6 Q Take a look at that.

7 A Yes.

8 Q Do you recognize it?

9 A Yes.

10 Q What is it?

11 A It's a Inmate Quarters History for inmate Charles  
12 Carneglia.

13 Q Okay. Is that document kept in the ordinary course of  
14 business?

15 A Yes.

16 MS. SEIFAN: Your Honor, I move to admit  
17 Government's Exhibit 190.

18 THE COURT: It's admitted.

19 (Government's Exhibit 190 was received in evidence.)

20 MS. SHARKEY: What Exhibit Number, please?

21 MS. SEIFAN: 190.

22 I think what I'm going to do is I'm just going to  
23 show you the next series of documents, what's been marked for  
24 identification as Government's Exhibits 176, 178, 180, 191,  
25 182 -- I apologize it's not in numerical order -- 179, 181,



1 183, 187, 184 and 203.

2 (Handing.)

3 Q Can you take a look at these documents. Take your time  
4 going through them.

5 (Pause in the proceedings.)

6

7 Q Do you recognize these documents?

8 A Yes.

9 Q What kind of documents are these?

10 A Various forms, such as Telephone Number Request forms, an  
11 Account Telephone Number List. You also have the inmate's  
12 Visitor List and you have the Commissary Records. And another  
13 telephone list.

14 Q For whom?

15 A Inmate Charles Carneglia.

16 Q And are these documents kept in the ordinary course of  
17 business?

18 A Yes.

19 MS. SEIFAN: Your Honor, I move to admit these  
20 series of documents.

21 THE COURT: Yes. They're all admitted.

22 (Government's Exhibits 176, 178, 180, 191, 182, 179,  
23 181, 183, 187, 184 and 203 were received in evidence.)

24 MS. SEIFAN: Okay.

25 Finally, I'm just going to show you, before we go

1 through them, I'm just going to publish them to the jury.

2 I'm going to show you what's been marked for  
3 identification as Government's Exhibits 204, 205, 206, 207,  
4 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219,  
5 220, and 221.

6 (Hanging.)

7 Q Take a look at these.

8 (Pause in the proceedings.)

9

10 Q Do you recognize these documents?

11 A Yes.

12 Q What do you recognize them to be?

13 A Inmate Visitor Forms. Telephone -- excuse me -- Inmate  
14 Account Telephone Number forms and Visitor Information forms  
15 for Inmate John Carneglia.

16 Q Are these documents kept in the ordinary course of  
17 business?

18 A Yes.

19 MS. SEIFAN: Your Honor, I move to admit all these  
20 documents, Government's Exhibits 204 to 221.

21 THE COURT: Admitted.

22 (Government's Exhibits 204 through 221 were received  
23 in evidence.)

24 MS. SEIFAN: Permission to publish them to the jury.

25 THE COURT: You may.

1 MS. SEIFAN: And to have Mr. Obando step down and  
2 explain them.

3 THE COURT: Yes.

4 (Witness steps down.)

5 MS. SEIFAN: The first document I'm going to show  
6 you is Government's Exhibit 190.

7 (The above-referred to Exhibit was published to the  
8 jury.)

9 MS. SEIFAN: Could you lower the lights?  
10 (Pause in the proceedings.)  
11

12 MS. SEIFAN: Okay.

13 Q Can you explain to the jury what we're looking at?

14 A This is Inmate Quarters History for Inmate Charles  
15 Carneglia.

16 Q Okay. And what's a quarters history?

17 A Basically, it's a detailed housing assignment for the  
18 inmate during the specified period of time.

19 Q Okay. Let's just, before we look at any particular line,  
20 can you just explain the different categories that are here?

21 The first category, all the way to the left?

22 A FCL stands for facility.

23 As you see, it says BRO. That's a three-letter  
24 abbreviation for Brooklyn.

25 FTD is a three-letter designation for Fort Dix.

1                   And if you see here down at the bottom, it says PHL,  
2                   which is Philadelphia.

3                   And CUM is Cumberland.

4       Q       So, the first category indicates where an inmate is  
5       housed?

6       A       Yes.

7       Q       What prison or location?

8       A       What prison.

9       Q       Okay. And those are abbreviations for the prison?

10      A       Yes.

11      Q       And then, the next category is called "assignment?"

12      A       It's the actual bed assignment that the inmate is  
13      assigned to.

14      Q       Okay. And then, the next category, "description?"

15      A       Description is basically the same thing as the actual  
16      assignment.

17      Q       Okay.

18      A       If you see over here, it says "G03." You see House G,  
19      Range 3.

20                   And the actual bed assignment, which is cell  
21      assignment, which is 420.

22                   Over here, 420, same thing (indicating).

23      Q       Okay. And what is the "start date and time stop?" Here  
24      at the next category, "start date."

25      A       You have April 4th, 2008, to current.

1 Q Okay. So, what are these categories? What are all these  
2 numbers, dates?

3 A Basically the start date and time stop basically when an  
4 inmate changes housing assignments.

5 As you see here, over here, it gives an example.  
6 "G03418." Inmate Charles Carneglia was assigned to that  
7 specific cell from March 27th, '08 to April 4th, '08.

8 And basically, he was assigned to a different cell,  
9 which was 420, basically from April 4th, 2008, to the present.

10 Q Okay. Let's start at the bottom and work our way up.

11 The last line on this screen reads BR0; right?

12 A Yes.

13 Q And it's, the start date is 11/5/2001?

14 A Yes.

15 Q How long did Mr. Carneglia -- and "BR0" you said stands  
16 for MDC, the Brooklyn prison?

17 A Yes.

18 Q How long was he in the Brooklyn prison?

19 A He arrived at -- R02 stands for receiving and discharge.

20 He was, he came in approximately on November 5th,  
21 2001, at approximately 10:39 p.m., and he left Brooklyn, it  
22 looks like December 13th, 2001, at 11 -- I can't read the last  
23 number. Looks like 11:20.

24 MS. SEIFAN: I can adjust it.

25 (Pause in the proceedings.)

1 A 11:29 a.m.

2 Q Okay. And then, after MDC, the next facility?

3 A He was transferred to FTC Oklahoma. "OKL" is the  
4 abbreviation for FTC Oklahoma.

5 Q Okay. And how long was he there for?

6 A He was there for, it looks like 12/13/2001, from  
7 approximately 6:05 p.m., and he was transferred basically four  
8 days later on December 17th, 2001, at 7:38 a.m.

9 Q So, he was probably in transit going to another prison?

10 A Yes.

11 Q Okay. The next prison?

12 A FCI Cumberland.

13 Q Okay.

14 A He arrived at receiving and discharge 12/17/2001 at  
15 approximately 5:46 p.m.

16 Q Okay.

17 A And he was at FCI Cumberland until, it looks like until  
18 September 16th, 2002, at approximately 11:02 a.m.

19 Q And then, he went to PHL for a couple days, it looks  
20 like?

21 A Yes.

22 Q In transit.

23 And then, he went to -- what's the next prison?

24 A FCI Fort Dix.

25 Q Okay. And how long was he at Fort Dix?

1 A He was at Fort Dix, looks like approximately 9/16/2002,  
2 through looks like September 26th, 2002.

3 Q A couple of days?

4 A Yes.

5 Q Then he was moved back to the MDC?

6 A Yes.

7 Q For how long?

8 A He arrived at MDC at 12/12/2002, at approximately  
9 1:55 a.m., and it seems he left, it looks like 1/12/2003, at  
10 approximately 8:10 a.m.

11 Q Okay. And then he went to Fort Dix?

12 A Yes.

13 Q Okay. And at Fort Dix, how long was he at Fort Dix?

14 A He was at Fort Dix, looks like 2/11/2003, at  
15 approximately 2:02 p.m. He was there at Fort Dix until  
16 6/29/2005 at approximately 1:57 --

17 Q I'm sorry?

18 A 6/29/2005, 9:09.

19 (Pause in the proceedings.)  
20

21 Q Okay. Can we just clarify for a moment what period he  
22 was in Fort Dix in 2002?

23 A That would be, he was there from -- excuse me.

24 Looks like he was there from September 24th, 2002,  
25 through September 26th, 2002.

1 Q Okay. And then, the next time he was at Fort Dix?

2 A He was there from 2/11/2003, through 6/29/2005.

3 Q Well, this reads -- I just need some clarification.

4 This reads...

5 A July 7th, 2003.

6 Q Yes. Right. And then, the next time?

7 A Basic change. He just basically changed bed assignments.

8 Q Okay.

9 A Actually, it looks like the same bed assignment.

10 Q Okay. And then, the next prison was MDC Brooklyn?

11 A Yes.

12 Q Okay.

13 (Pause in the proceedings.)

14

15 Q Where was he between September 24th, '02, and

16 December 12th, '02?

17 MS. SHARKEY: I'm sorry, I couldn't hear the  
18 question.

19 Can I have it read back?

20 THE COURT: Yes.

21 Read it back, please.

22 (The requested portion of the record was read back  
23 by the Official Court Reporter.)

24 A He was at FCI Fort Dix from September 24th, 2002, to  
25 September 26th, 2002.



1 Q Okay. And then, where did he go next?

2 A Basically, he arrived at Brooklyn on December 1st, 2002.

3 Q Okay. So, he was in transit between September 26th, '02,  
4 and December 1st, '02?

5 A Well, it doesn't state over here if he was in any transit  
6 facility. There's a gap in there between September 26th and  
7 December 12th.

8 Q But after Fort Dix, he went to MDC?

9 A Yes.

10 Q All right.

11 (Pause in the proceedings.)

12

13 MS. SEIFAN: Okay. I'm showing you what's been  
14 marked for identification -- it's already in evidence as  
15 Government's Exhibit 178.

16 (The above-referred to Exhibit was published to the  
17 jury.)

18 Q What are we looking at here?

19 A It's a Telephone Number Request form for Inmate Charles  
20 Carneglia.

21 Q Okay. Can you, let's talk about what does the  
22 "add/delete" mean?

23 A That means either he's adding the number or deleting a  
24 number off his phone list.

25 Q Okay. So, let's take the third line.

1           The "A" stands for add?

2   A     Add. He's adding a number.

3   Q     And whose number is he adding?

4   A     J. Cavallo.

5   Q     Okay. And who filled out these documents?

6   A     The inmate himself.

7   Q     The inmate himself fills out these documents?

8   A     Yes.

9   Q     So, he's asking the prison to add these people to his  
10 telephone list?

11  A     Yes.

12  Q     So, the person he's asking to add to his telephone list  
13 is a guy named -- is a friend, J. Cavallo?

14  A     Yes.

15  Q     And what's the phone number for J. Cavallo?

16  A     Area code (516) 334-3446.

17  Q     And then, the inmate also puts down the person's address?

18  A     Yes. A listed address of 736 Pleasant Avenue, Westbury,  
19 New York, 11590.

20  Q     Okay. And this document was, is from what prison?

21  A     This document is from FCI Cumberland.

22  Q     Okay. And what is it, what's, what is the date on this  
23 document?

24  A     It looks like the date/time stamp on here is  
25 January 23rd, 2002.

1 Q So, the time stamp is when the prison received that  
2 document?

3 A Yes.

4 Q Okay.

5 MS. SEIFAN: Okay. I'm showing you the first page  
6 of Government's Exhibit 180.

7 (The above-referred to Exhibit was published to the  
8 jury.)

9 Q What are we looking at in this -- what is this document?

10 A This is a Visitor Form for Inmate Charles Carneglia.

11 Q Okay. And who fills out this document?

12 A The prospective visitor. The person that wants to visit  
13 the inmate.

14 Q And who is the prospective visitor on this document?

15 A John Cavallo.

16 Q So, John Cavallo is the person who filled this out?

17 A Yes.

18 Q And what is John Cavallo's date of birth?

19 A The date of birth is 5/26/48.

20 Q And his telephone number?

21 A Listed as, excuse me.

22 The listed telephone number is (516) 334-3446.

23 Q Is this the same person that the inmate, Charles  
24 Carneglia, wanted to add to his telephone call list?

25 A Yes.

1 Q Okay. And this number at the top, 08773-016, what is  
2 that?

3 A That's the inmate's register number.

4 Q And what prison is that document related to?

5 A Oh, excuse me. FCI Cumberland.

6 Q Okay. So, this is Mr. Cavallo requesting to visit inmate  
7 Charles Carneglia?

8 A Yes.

9 Q Okay. And does this document have a date on it?

10 A It's going to be on the corner.

11 MS. SEIFAN: Okay, let me just...

12 Q Can you see the date at all?

13 A No, I don't.

14 Q Okay.

15 A There's -- excuse me.

16 There's a date up here. The NCIC was supposedly  
17 conducted on 4/30 -- I can't read if that's '02 or '04.

18 Q What does NCIC mean?

19 A NCIC stands for National Crime Information Center. It's  
20 a database that utilizes diverse law enforcement agencies to  
21 query the information as far as an individual or property.

22 Q Okay. Now, when an individual seeks to be put on a  
23 visitor list of an inmate, is a criminal background check run  
24 on that person?

25 A Yes.

1 Q And that's the NCIC check?

2 A Yes.

3 Q And is that run for every single person who wants to  
4 visit --

5 A Yes.

6 Q -- an inmate?

7 A Yes.

8 Q And what's the purpose of doing that?

9 A To ascertain if the individual has a criminal record.

10 Q Okay. And if they have a criminal record, are they  
11 permitted to...

12 What happens if it comes back and the person does  
13 have a criminal record?

14 A The warden has final approval authority as far as  
15 allowing the visitor to come to the institution. Sometimes  
16 they basically, you take the severity of the charge, the  
17 frequency and how recent was it.

18 Q Okay. So, the second page of Government's Exhibit 180  
19 was an NCIC check?

20 (The above-referred to Exhibit was published to the  
21 jury.)

22 A Yes.

23 Q Okay. And what was the date this check was run?

24 A Looks like the date on it is 4/30/2002, at approximately  
25 2:13 p.m.

1 Q Okay. And when is the NCIC check done? How soon after a  
2 visitor form is submitted is an NCIC check done?

3 A Normally, the procedure is, the inmate sends the visitor  
4 form to the prospective visitor. The prospective visitor  
5 fills out the form, sends it back to the institution to the  
6 counselor that's designated to the inmate and then, the  
7 counselor runs the NCIC check. It could be days, it could be  
8 weeks.

9 Q Okay. But is it fair to say probably at the most, a  
10 couple of weeks after the visiting form is submitted?

11 A Yes.

12 Q So, on this page, on the first page of Government's  
13 Exhibit 180, there's no date on the form.

14 But is it fair to say, because the NCIC was run on  
15 4/30/02, it was probably the document was not submitted more  
16 than a few weeks before?

17 MS. SHARKEY: Objection; "probably."

18 THE COURT: I'll allow it.

19 A Probably.

20 MS. SEIFAN: Okay. Let's turn back to this document  
21 for a second.

22 THE COURT: What document have you put on?

23 MS. SEIFAN: I'm sorry, the first page of  
24 Government's Exhibit 180.

25 (The above-referred to Exhibit was published to the

1 jury.)

2 Q So, what other information does a prospective visitor  
3 have to fill out other than their name, their date of birth,  
4 their address, their telephone number, their race and their  
5 sex?

6 A Prime example, Section 6: "Are you a U.S. citizen?"

7 Section 7: "Relationship to the above-named  
8 inmate."

9 Number 8, which is the desire to visit him or her.

10 Section 9: "Did you know this person prior to his  
11 or her current incarceration?"

12 Number 10: "Indicate the length of time you have  
13 known this person and where the relationship developed."

14 Number 11 --

15 Q So, I'm sorry. So, on number ten, Mr. Cavallo is  
16 indicating that he knows the inmate, Charles Carneglia, since  
17 child hood.

18 It says: "Since childhood, parents were good  
19 friends."

20 A Yes.

21 Q Okay.

22 A Number 11 says: "Have you ever been convicted of a  
23 crime?" It stated: "No."

24 12: "Are you currently on probation, parole or any  
25 kind of supervision?" He responded: "No."

1           Section 13: "Do you correspond or visit with other  
2 inmates?" "Yes." And he indicates Gene Gotti and an address  
3 of Bradford, Pennsylvania.

4   Q     So, indicating that Gene Gotti, he visits another inmate  
5 in the prison system?

6   A     Yes.

7   Q     All right. And then, that person, the prospective  
8 visitor, is required to sign the document?

9   A     Yes.

10   Q     Okay.

11           MS. SEIFAN: Maybe we'll just, I'll show you the  
12 first page of Government's Exhibit 191.

13           (The above-referred to Exhibit was published to the  
14 jury.)

15   Q     Again, this is for inmate -- what inmate is this?

16   A     Charles Carneglia.

17   Q     Okay. Who's the person who's asking to visit him?

18   A     Jodi Ryan.

19   Q     Okay. And what prison is this?

20   A     FCI Cumberland.

21   Q     What's the date?

22   A     April 2nd, 2002.

23   Q     And this number again at the top, 08773-016?

24   A     Is inmate Charles Carneglia's register number.

25   Q     And do they stay with the same register number?



1 A Yes.

2 Q The telephone number for Ms. Ryan is what?

3 A Area code (718) 845-4862.

4 Q Okay. And how did this person meet him? Do you know  
5 that?

6 A Based on Section 10, "indicate the length of time you've  
7 known this person and the relationship developed," it says:  
8 "Four to five years, met him through a friend."

9 Q Okay.

10

11 (Continued on following page.)

12

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25

1     **DIRECT EXAMINATION**

2     **BY MS. SEIFAN: (Cont'd)**

3     Q     The first page of Exhibit 191, the document, dated April  
4     2, 2002?

5     A     Yes.

6     Q     You said when a visitor comes -- applies to see an  
7     inmate, a NCIC check is made?

8     A     Yes.

9     Q     The second page of Government Exhibit 191 indicates that  
10    the NCIC check was run when?

11    A     April 19, 2002.

12    Q     The document dated April 2, 2002, the NCIC check is  
13    dated April 19, 2002?

14    A     Yes.

15    Q     Pretty close in time?

16    A     Approximately, two weeks.

17    Q     Within two weeks this check was done for this  
18    prospective visitor of Jodi Ryan?

19    A     Yes.

20    Q     The next document is Government Exhibit 182. Again, who  
21    is requesting to visit Charles Carneglia?

22    A     Allen Meshanski.

23    Q     Where is he requesting, what prison?

24    A     FCI Cumberland.

25    Q     And Mr. Meshanski did not provide a telephone number?

1 A No phone.

2 Q He provided an address?

3 A 149-42 83rd Street, Howard Beach, New York 11414.

4 Q What's his relationship to the inmate?

5 A Friend.

6 Q Indicated he knew him through--?

7 A Seems 44 years from neighborhood -- four years from the  
8 neighborhood.

9 Q Showing you the second page of Exhibit 182. This is the  
10 NCIC check for Allen Meshanski?

11 A Yes.

12 Q What is the date?

13 A 3/15/02.

14 Q Fair to say that this check was run within a few weeks  
15 of this person requesting a visit with Charles Carneglia?

16 A Probably.

17 Q When you say "probably"?

18 A Estimated time from when counsel receives -- the person  
19 fills it out to the time that counsel receives it, looking at  
20 a couple of weeks time frame.

21 Q Not like a year?

22 A No.

23 Q Three weeks at the most?

24 A Yes.

25 Q Showing you Government Exhibit 179. I will show you the

1 bottom for a second. You see the institution?

2 A Yes.

3 Q Fort Dix?

4 A Yes, FCI Fort Dix.

5 Q What does FCI mean?

6 A Federal Correctional Institution. This is an inmate  
7 approved visitors' list, inmate Charles Carneglia.

8 Q Who is the first visitor?

9 A John Cavallo, listed address 736 Pleasant Avenue,  
10 Westbury, New York 11590.

11 Q The telephone number?

12 A (516) 334-3446.

13 Q This person said approved, what does that mean?

14 A Approval date.

15 Q For what?

16 A FCI Fort Dix approved to be on the visitor's list.

17 Q The third row?

18 A Allen Meshanski, 149-42 83rd Street, Howard Beach, New  
19 York 11414, listed phone number (718) 845-4862.

20 Q This number (718) 845-4862, do you recall this being the  
21 number that Jodi Ryan put down on the visitors' form?

22 A Yes.

23 Q The number for Allen Meshanski is (718) 845-4862?

24 A Yes.

25 Q Going back to Jodi Ryan's visitor's request?

1 A (718) 845-4862.

2 Q Jodi Ryan, on a different document, and Allen Meshanski  
3 put down the same telephone number?

4 A Yes.

5 Q That's the same Allen Meshanski indicated on this other  
6 document that he had no phone?

7 A Yes.

8 Q Allen Meshanski is approved on what date?

9 A May 17, 2004.

10 Q And the address that he gives?

11 A 149-42 83rd Street, Howard Beach, New York.

12 Q Going to the fourth line, Jodi Ryan?

13 A She has listed the address of 150-05 95th Street, Ozone  
14 Park, New York 11417.

15 Q Does she have a phone number listed?

16 A No.

17 Q What does that mean if there is no phone?

18 A There is no phone, no phone.

19 Q The visitor did not provide a phone?

20 A Probably.

21 Q The approved -- when was she approved?

22 A September 15, 2004.

23 Q The next one Government Exhibit 181. What is this  
24 document?

25 A Inmate visitor information form, inmate Charles

1 Carneglia.

2 Q Who is requesting a visit?

3 A Thomas Cacciopoli, C A C C I O P O L I.

4 Q Does this document indicate how Mr. Cacciopoli knows  
5 Charles Carneglia?

6 A He indicates he knows the individual for about 40 years  
7 from the same area.

8 Q In question eleven it says have you ever been convicted  
9 of a crime?

10 A He indicates, no.

11 Q This is -- does this document have a date on it  
12 anywhere?

13 A No.

14 Q Not in the right-hand corner?

15 A No.

16 Q I will show you the second page of Government Exhibit  
17 181. When was the NCIC check run?

18 A On November 23, 2004.

19 Q Fair to say that Mr. Cacciopoli submitted this document,  
20 you know, within a few weeks -- at the latest a few weeks  
21 before November '04?

22 A Yes.

23 Q And again, who fills -- let me show the first page. Who  
24 fills out the document?

25 A Thomas Cacciopoli.

1 Q He indicated he was never convicted of a crime?

2 A Yes.

3 Q Did the NCIC report come back as showing that he had?

4 A Yes, it was called a positive hit. Based on the NCIC  
5 check conducted there was an arrest that was done --  
6 conducted April 11, 1969. Looks like the arresting agency is  
7 the New York City Police Department, the 75th, and he was  
8 arrested for promoting gambling and possession of gambling  
9 records.

10 Q We don't have to go through every single -- there are  
11 other arrests and convictions listed on the document?

12 A Yes.

13 Q What happens when an inmate -- what happens when a  
14 visitor, prospective visitor, indicates that they were never  
15 convicted of a crime but a check is done and it shows that he  
16 has?

17 A The person is providing false information on the form.

18 Q It's fair to say that this person provided false  
19 information on the inmate visitors form?

20 A Yes.

21 Q To remind the jury, how do these prospective visitors  
22 get the forms?

23 A They are mailed by the inmate themselves.

24 Q The inmate sends them out to people who he would like to  
25 visit him?

1 MS. SHARKEY: Objection as to form.

2 Q How do prospective visitors get these forms?

3 A The inmate sends it to the prospective visitor, the  
4 prospective visitor fills it out and sends it back to the  
5 institution.

6 Q I will show you Government Exhibit 183. Again this is a  
7 visitor request form for Charles Carneglia?

8 A Yes.

9 Q Who is the visitor?

10 A Allen Meshanski.

11 Q What institution is this person requesting a visit?

12 A FCI Fort Dix.

13 Q What is the phone number --

14 A (718) 845-4862.

15 Q -- of Allen Meshanski.

16 Q The next document is Government Exhibit 187. What is  
17 this?

18 A Inmate visitor form.

19 Q For whom?

20 A Charles Carneglia.

21 Q Who is requesting the visit?

22 A William Victor.

23 Q How does William Victor know Charles Carneglia?

24 A Apparently --

25 MS. SHARKEY: Objection.



1 Q What does the document say as to how William Victor  
2 knows Charles Carneglia?

3 A Section ten, the length of time, he responded 35 to 40  
4 years.

5 Q Look at question eleven again. Have you ever been  
6 convicted of a crime?

7 A He stated, no.

8 Q Is there a date on this document?

9 A Not on the form.

10 Q I will show you the second page of Government Exhibit  
11 187, the NCIC check?

12 A Yes.

13 Q When was this conducted?

14 A May 18, 2005.

15 Q May 18, 2005. It's fair to say although the first page  
16 of Government Exhibit 187 is not dated, it was submitted  
17 within a few weeks of May 18, 2005?

18 A Yes.

19 MS. SHARKEY: Objection.

20 THE COURT: I'll allow it.

21 Q And Mr. Victor indicated that he had not been convicted  
22 of a crime. Does the NCIC check show differently?

23 A Yes.

24 Q Is it fair to say that Mr. Victor lied on this form  
25 submitted to the Bureau of Prisons?

1 A Yes.

2 Q I will now show you Government Exhibit 184. What are we  
3 looking at?

4 A This is a commissary record for inmate Charles  
5 Carneglia.

6 Q What is commissary?

7 A It's basically the inmate's account that he uses for  
8 phone calls and purchase commissary items, toiletries, food  
9 stuff, sweat pants.

10 Q How do they get money?

11 A They receive it through Western Union, which is done  
12 through Western Union or through money orders.

13 Q Let's start at the top.

14 MS. SHARKEY: What exhibit is that?

15 MS. SEIFAN: 184. I think it's easier.

16 Q I will show you what is marked for identification  
17 Government Exhibit 184 A. Do you recognize this?

18 A Yes.

19 Q What is it?

20 A Commissary records for inmate Charles Carneglia.

21 Q Is this a fair and accurate reproduction of Government  
22 Exhibit 184

23 A Yes.

24 MS. SEIFAN: Move to admit.

25 THE COURT: Admitted.

1 Q Why don't we start at the top. What is True View?

2 A This information is gotten from the program.

3 Q Transaction date is indicates what?

4 A The date the money was transferred to the inmate's  
5 account.

6 Q And the time of?

7 A The time the transaction was made, the location-- the  
8 location where the inmate is housed at the time that the  
9 transaction is made.

10 Q BRO stands for?

11 A Brooklyn.

12 Q The Metropolitan Detention Center, which is the federal  
13 prison in Brooklyn?

14 A Yes.

15 Q And the transaction time?

16 A Western Union.

17 Q Lock box what does that mean?

18 A The money order sent to the account.

19 Q After that it says the amount, that is the amount the  
20 inmate received?

21 A Yes.

22 Q The sender's last name?

23 A Yes.

24 Q First name?

25 A Yes.

1 Q The address of the sender and phone number?

2 A Yes.

3 Q If we're looking at 10/24/08, at 12:10 p.m. Western  
4 Union, who is the sender?

5 A Jackie Cavallo.

6 Q And he sent?

7 A Approximately \$200.

8 Q The phone number?

9 A 516, 334-3446.

10 Q Let's go to 8/31/08.

11 A It was Western Union transaction for \$100 by the same  
12 individual Jackie Cavallo.

13 Q And we go to July 3rd through eight?

14 A Western Union transaction \$200 from Jackie Cavallo.

15 Q 6/20/08?

16 A That was \$200 transaction, Western Union from Augustus  
17 Sclafani.

18 Q It's not highlighted, there is a Ryan they're, 6/12/08?

19 A Approximately 5:08. Western Union transaction for the  
20 amount of \$1,000 from Jodi Ryan.

21 Q And she indicates (718) 854-4862?

22 A Yes.

23 Q The next person after that, 6/10/08?

24 A At 11:11 a.m. Western Union transaction was completed  
25 for the amount of \$200 from Allen Meshansky, (718) 845-4862.

1 A Yes.

2 Q That is the same number that Jodi Ryan had provided for  
3 the thousand dollars?

4 A Yes.

5 Q Let's look at the next section, February 13, at  
6 approximately 12:09?

7 A Western Union transaction in the amount of \$300 by Allen  
8 Meshanski.

9 Q Looking under that, it indicates, FTD payroll dash IPP  
10 for FTD lock box CD?

11 A Yes.

12 Q I think. You testified that the locked box CD is a  
13 money order?

14 A Yes.

15 Q When an inmate receives a money order the person doesn't  
16 put down the name, who is sending it, you don't know?

17 A Exactly.

18 Q Fair to say here it says \$700 Carneglia yeah. What does  
19 that mean?

20 A The individual might have wrote the last name.

21 Q Who?

22 A Whoever sent the money order.

23 Q Let's go back. Showing you government 203. What is  
24 that?

25 A This is the approved telephone list for Charles

1 Carneglia.

2 Q When you request numbers to be put on your phone list,  
3 do you have to indicate who you are calling?

4 A Normally the new procedures when the inmates fills out a  
5 telephone number request form, it's a scanable form,  
6 previously, years ago, they used to use a handwritten form,  
7 which we seen before, but the problem is some inmates wanted  
8 to, how you say it -- they weren't too keen in what they  
9 wrote down.

10 Q What does that mean?

11 MS. SHARKEY: Objection?

12 THE COURT: Sustained.

13 A The inmates -- I don't want to say they were illiterate,  
14 they couldn't spell names and the handwriting was real poor,  
15 sometimes it was hard to translate the information from the  
16 telephone request form to the actual computer, the BOP  
17 started a form, which the inmate can fill out the ovals and  
18 the category of relationships, attorney, friend, parent,  
19 sibling.

20 Q What are the categories?

21 A This form says attorney, friend, parent, and other cases  
22 you could put down sibling.

23 Q And the numbers in the first column are the numbers that  
24 they requested, that Charles Carneglia has indicated that he  
25 would like to call?

1 A Yes.

2 Q And this is for what prison?

3 A MDC Brooklyn.

4 MS. SEIFAN: I don't know if the jury wants to take a  
5 break. Do you wish to take a break? Some of the jurors wish  
6 a break.

7 THE COURT: We will take one.

8 (Jury leaves courtroom.)

9 (Recess taken.)

10

11 THE COURT: Bring the jury in.

12 (Jury present.)

13 BY MS. SEIFAN: (Continued)

14 Q You testified earlier that the MDC or the Metropolitan  
15 Detention Center, the prison in Brooklyn, records telephone  
16 calls of inmates?

17 A Yes.

18 Q Are there times during the course of your duties that  
19 you are required to respond to subpoenas or inmate telephone  
20 recordings?

21 A Yes.

22 Q Are you responsible for retrieving those calls and  
23 submitting them to whoever requested them?

24 A Yes.

25 Q Were you requested to do that for the inmate Charles

1 Carneglia?

2 A Yes.

3 Q I'm going to show you what has been marked for  
4 identification as Government Exhibit 202-A and Government  
5 Exhibit 230. Take a look at Government Exhibit 202-A first?

6 A Yes.

7 Q Do you recognize that document?

8 A Yes.

9 Q What do you recognize it to be?

10 A It's a call record for inmate Charles Carneglia.

11 Q What is the date range of the records?

12 A From 2/14/08 through November 3, 2008.

13 Q Are those documents kept in the ordinary course of  
14 business?

15 A Yes.

16 MS. SEIFAN: I move to admit Government Exhibit  
17 202-A.

18 THE COURT: Just 202-A?

19 MS. SEIFAN: Yes.

20 Q I showed you a CD labeled Government Exhibit 230?

21 A Yes.

22 Q Do you recognize that CD?

23 A Yes.

24 Q What does it contain?

25 A Contains phone conversations of inmate Charles



1 Carneglia.

2 Q Did you listen to the CD?

3 A Yes.

4 Q You said that is a copy?

5 A Yes.

6 Q Of the original recordings that you provided to the  
7 government?

8 A Yes.

9 Q Only certain calls?

10 A Yes.

11 Q Is it a fair and accurate copy of the original  
12 recordings?

13 A Yes.

14 Q Have you compared those calls to the original -- those  
15 calls to the one on the original CD that you produced to the  
16 government in response to the subpoena?

17 A Yes.

18 MS. SEIFAN: We move to admit Government Exhibit 230.

19 THE COURT: Exhibits 202-A and 230 are admitted the  
20 transcripts 230 T 1 through 11.

21 MS. SEIFAN: I'm about to show him those.

22 Q That CD, you know you listened to it because your  
23 initials are on it?

24 A Yes, and the date.

25 Q I show you 230 T-1 to 230 T-2, 3, 5, 6, 7, 8, 9 and 10?

1 A Yes.

2 Q Take a look at these.

3 (Shown to witness.)

4 Do you recognize the transcripts.

5 A Yes.

6 Q How do you recognize them?

7 A It has my initials and the date that I transcribed these  
8 calls.

9 Q Did you review these transcripts while listening to  
10 Government Exhibit 230?

11 A Yes.

12 Q Are these transcripts fair and accurate transcripts of  
13 the certain portions of the calls on Government Exhibit 230.

14 A Yes.

15 MS. SEIFAN: Your Honor we move to admit them as an aid  
16 to the jury.

17 THE COURT: Yes.

18 MS. SEIFAN: Permission to publish?

19 THE COURT: Yes.

20 MS. SEIFAN: You can look into your binders now.

21 Q The first call we play dated February 14, 2008, at 1:31  
22 p.m. between Charles Carneglia and Jodi. We will start the  
23 excerpt at 10:24.

24 (Tape played.)

25 Q Are the inmates aware that the telephone calls are

1 recorded?

2 A Yes.

3 Q How could they know that?

4 A Upon entrance to MDC they fill form 407, it's an  
5 acknowledgment that the inmates know that their phone calls  
6 are monitored at the MDC.

7 Q Are there signs in the unit that let inmates know their  
8 calls are being recorded?

9 A On most phone stations they have a sign in English and  
10 Spanish that the phone calls are monitored.

11 Q In your experience, do you think inmates try to mask  
12 what they are talking about when they are on the telephone?

13 A Yes.

14 Q Do they often speak in code when they are on the  
15 telephone?

16 A Yes.

17 MS. SHARKEY: Objection.

18 THE COURT: I'll allow it.

19 MS. SEIFAN: We will play the next call. Government  
20 Exhibit 230 T-2. February 14, 2008 at 3:05 p.m., Charles  
21 Carneglia and Allen Meshanski.

22 (Tape played.)

23 Q What does it mean to be in the hole?

24 A Inmates refer to the hole as special housing unit.

25 Q What kind of housing unit?

1 A It's used for PC, protective custody or inmates facing  
2 disciplinary sanction for some type of infraction.

3 Q I will now play --

4 THE COURT: Have him describe it, the jury will  
5 believe it's a big hole in the ground. Tell them what it is.

6 A It's basically a unit that is contained in what they  
7 call two ranks, rank one and two, each has 30 to 40 cells,  
8 two man cells and the individuals that are in the cells are  
9 in the cells 23 hours a day and one hour for rec time. No  
10 access to TV, they do have the option of having a radio but  
11 as far as contact if they were in a dormitory setting or a  
12 sublock setting they don't have.

13 THE COURT: What is the, approximate, size?

14 THE WITNESS: The federal regulations, six by eight  
15 by eight.

16 Q Do inmates have access to telephone calls in the hole?

17 A Yes.

18 Q They do?

19 A Yes.

20 Q We will now play the call February 14, 2008, 7:17 p.m.  
21 transcript Government Exhibit 330 T-3, call between Charles  
22 Carneglia, Allen Meshanski and Jodi.

23 (Tape played.)

24 (Followed on next page.)

25

1 DIRECT EXAMINATION

2 BY MS. SEIFAN: (Continued)

3 (Audio played for jury.)

4

5 MS. SEIFAN: The excerpt stopped at four minutes and  
6 12 seconds.

7 And we're going to pick up again at ten minutes and  
8 30 seconds.

9 (Audio played for jury.)

10

11 MS. SEIFAN: The excerpt ended at ten minutes  
12 58 seconds.

13 Okay. Now, we're going to move to March 7th, 2008.  
14 1:02 p.m. It's a call between Charles Carneglia and Jackie  
15 Cavallo. The transcript is Government's Exhibit 230T-5. It's  
16 going to start at one minute and 17 seconds.

17 (Audio played for jury.)

18

19 Q Mr. Obando, just to remind the jury, there's a sign next  
20 to the telephone when an inmate is making a call that says  
21 it's being monitored?

22 A Yes.

23 Q Okay.

24 MS. SEIFAN: Turning to March 7th, 2008, 7:21 p.m.,  
25 Charles Carneglia and Bruno. Government's Exhibit 230T-6 is

1 the transcript. Starting at one minute, 57 seconds.

2 I think in your binder, just for the jury, I think  
3 pages two and one are flipped.

4 MS. SHARKEY: I'm sorry?

5 MS. SEIFAN: I think in the binders page two comes  
6 before page one. At least in my binder. No? I'm sorry, in  
7 my binder it was. Okay.

8 The first excerpt begins at 1:57 and ends at 2:10.

9 (Audio played for jury.)

10

11 MS. SEIFAN: The next excerpt starts at two minutes,  
12 43 seconds and ends at three minutes and 17 seconds.

13 (Audio played for jury.)

14

15 MS. SEIFAN: The next call is April 4th, 2008, at  
16 8:34 p.m., between Charles Carneglia and Brian. It's  
17 Government's Exhibit 230T-7. That's the transcript.

18 The call is going to begin at seven minutes and  
19 35 seconds and end at eight minutes and 21 seconds.

20 (Audio played for jury.)

21

22 MS. SEIFAN: The next excerpt is going to begin at  
23 ten minutes and 20 seconds and end at ten minutes, 36 seconds.

24 (Audio played for jury.)

25

1 MS. SEIFAN: The next call, April 8th, 2008,  
2 5:46 p.m., Charles Carneglia and Jackie Cavallo.

3 The transcript is Government's Exhibit 230T-8.  
4 (Audio played for jury.)  
5

6 THE COURT: All right, we'll continue tomorrow.

7 MS. SEIFAN: Your Honor, we have two calls left.  
8 One is a few seconds and one is five minutes.

9 THE COURT: Do the jurors want to wait?

10 THE JURY: Yes.

11 THE COURT: All right. Finish the five minutes.

12 MS. SEIFAN: Just one question for Mr. Obando.

13 Q Is there a Federal prison near an airport?

14 A No.

15 Q No?

16 A No. Actually, there's what you call the GAO, which is a  
17 private facility in Jamaica, Queens.

18 Q All right.

19 MS. SEIFAN: Let's turn to April 1st, 2008,  
20 6:11 p.m., the Charles and Allen Meshanski transcript,  
21 Government's Exhibit 230T-9.

22 The excerpt begins at 2:29 and ends at 2:48.  
23 (Audio played for jury.)  
24

25 MS. SEIFAN: Okay. The next call is May 25th, 2008,

1 9:10 a.m., Charles Carneglia and Jackie Cavallo. The  
2 transcript is 230T-10.

3 I'm going to start the excerpt at one minute and six  
4 seconds. This is the last call we're going to play today.

5

6 (Continued on following page.)

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1 THE COURT: Good night everybody. 9:30, please.

2 (Jury leaves courtroom.)

3 THE COURT: Thank you. You may step down.

4 Any other witness?

5 MR. BURLINGAME: We may have one two minute witness,  
6 but it's doubtful. This is probably the last witness.

7 THE COURT: This is the end of your case.

8 MR. BURLINGAME: Yes.

9 THE COURT: Make your motions.

10 MR. BURLINGAME: It wouldn't effect the motions.

11 MS. SHARKEY: We'd like to make a motion.

12 THE COURT: Make it.

13 MS. SHARKEY: Judge, we're moving for a judgment of  
14 acquittal.

15 I specifically want to talk about a couple of counts  
16 and the first count I would like to reference is Racketeering  
17 Act Nine, the extortion of John Doe Number Three, who has  
18 subsequently been identified. When the Court directed the  
19 government to identify who the victims were as Bobby  
20 Chiavo.

21 In Racketeering Act Nine, your Honor, the government  
22 charges Mr. Carneglia with extortion, lasting, approximately,  
23 14 years.

24 Respectfully, the government has elicited nothing,  
25 nothing on those charges. We did a transcript search on this

1 individual and his name came up at two or three places.  
2 There was nothing concerning an extortion. He was viewed  
3 during the course of Kevin McMahon's testimony in a video  
4 that was taken in the Hamptons when it was testified by  
5 McMahon that John Carneglia was going away to jail.

6 During the course of Peter Socarro's testimony on  
7 February 3rd, of 2009, at page 859, there was Q and A  
8 concerning whether or not Sicarro stole cars for the  
9 defendant.

10 "Did you do it alone or with other people? With  
11 other people.

12 "Did you steal cars for other people in addition to  
13 the defendant. Yes. Sicarro, D'Gino and Bobby Ciaffa. Who  
14 is Bobby Ciaffa? He's a close friend of Charles and John's.

15 "QUESTION: Did he have a position in the Gambino  
16 family?

17 "ANSWER: I would say he was an associate

18 "QUESTION: Did he have a relationship with any  
19 organized crime family?

20 "Later in life he married Frank Vergenti's daughter  
21 who was an associate of the Genovese."

22 Nothing about a 15 year extortion.

23 The next portion of testimony that deals with Mr.  
24 Chiavo is an identification of ahead shot by Sicarro. Agent  
25 Haggerty, is asked about Bobby Chiavo.

1 THE COURT: Go ahead.

2 MS. SHARKEY: Agent Haggerty is asked about Bobby  
3 Chiavo.

4 "QUESTION: Was he part of your investigation?

5 "ANSWER: No, the name did not jump out at me at  
6 that time at all.

7 That's at page 2497 on February 17.

8 On February 17 --

9 THE COURT: Go ahead.

10 MS. SHARKEY: Judge, on February 17th Kevin McMahon  
11 testified about the video in which Bobby Chiavo appeared on  
12 the deck of the home rented by John Carneglia.

13 "QUESTION: Do you know who John Carneglia's friends  
14 were?

15 "ANSWER: He gives a list names.

16 At page 2555 and he says John Carneglia friends  
17 included Bobby Chiavo.

18 "QUESTION: He was a friend of John Carneglia?

19 "ANSWER: Yes.

20 "QUESTION: Did John Carneglia ever do any favors  
21 for Chiavo?

22 "ANSWER: John Carneglia did favors for Chiavo.  
23 Somebody was looking to kill Chiavo, John Carneglia took care  
24 of it.

25 "QUESTION: Do you know if Chiavo was every

1 arrested?

2 "ANSWER: Yeah, I was in court in Nassau on a car  
3 case and I saw Chiavo had a trial going on.

4 Mr. McMahon I identifies a head shot of Bobby  
5 Chiavo.

6 He identifies in a video.

7 Judge, that is the extent of the testimony on  
8 Racketeering Act Nine where Bobby Chiavo appears in the  
9 testimony. There is absolutely no testimony to support the  
10 count and based on -- it was also pointed out to me there is  
11 a John Carneglia jail call to Charles Carneglia on January  
12 15th of 2007 where John Carneglia asks if Bobby comes around  
13 for Christmas. That is it.

14 There is absolutely nothing in the record to support  
15 a 15 year extortion and the defense respectfully requests  
16 that the Court dismiss that count on defendant's motion.

17 THE COURT: Denied.

18 MR. FARBER: I ask the Court if we overlooked  
19 something that is in the record.

20 THE COURT: I think there is enough there in terms  
21 of his total work for the conspiracy so that the jury could  
22 infer guilt on that count.

23 MR. FARBER: The government is required to establish  
24 that Mr. Chiavo paid money out of fear. There is nothing in  
25 the record establishing this man made any payments out of

1 fear.

2 MS. SHARKEY: Or made any payment at all or did  
3 anything in furtherance of the conspiracy.

4 THE COURT: What's the government's view?

5 MR. BURLINGAME: Judge, on Bobby Chiavo briefly is  
6 Kevin McMahon testified that John Carneglia took care of a  
7 problem, somebody was trying to kill him and he became an  
8 associate of John Carneglia, an associate of John and Charles  
9 Carneglia.

10 Multiple witnesses testified when John Carneglia  
11 went to prison his associate started reporting to Charles  
12 Carneglia, a lot of testimony about Christmas money, the  
13 associates have to pay up to made men that they are under and  
14 the 2007 phone call again the defendant and his brother in.  
15 Which the defendant's brother says, did Bobby Chiavo see you  
16 and he says he usually sees me for Christmas.

17 Sees me for Christmas means paying the extortion  
18 money at Christmas. That is the essentials of the count.

19 MS. SHARKEY: That is certainly more than a leap of  
20 faith.

21 THE COURT: Excuse me.

22 You can brief it. At the moment I'm denying it.

23 MR. FARBER: We will be. I don't think the Court is  
24 prepared to go much further today in terms of actually  
25 dismissing counts. I would like to set forth on the record

1 the basis which I think ultimately a Rule 29 should be  
2 granted, should the jury come back -- after the jury comes  
3 back with a verdict.

4 With regard to Racketeering Act Number One, the  
5 murder of Officer Gelb, I would submit to the Court that  
6 there has been no evidence to establish that particular crime  
7 was done in furtherance of the criminal enterprise. There  
8 may be circumstantial evidence or evidence construed to point  
9 to Mr. Carneglia having a motive.

10 At most, and I submit I'm not granting that, there  
11 is nothing to show that murder murdered the enterprise, there  
12 was testimony in the record a murder of a law enforcement  
13 agent is something the crime family disapproved of and tried  
14 to avoid.

15 Similarly, with regard to the murder of Michael  
16 Corteo. Aagain it was a brawl brought out spontaneously, a  
17 fight over a girl at the Blue Fountain Diner.

18 There is nothing in the record to establish that  
19 that further advanced the criminal enterprise. The same thing  
20 with the death of Salvatore Puma. If you take it on face  
21 value it's a dispute between Mr. Carneglia and Mr. Puma and  
22 not to advance the criminal enterprise.

23 There is no evidence to establish that Mr. Carneglia  
24 was involved in the securities fraud charge in this  
25 particular case. The evidence against him with regard to both

1 the Sears and Papa Varo robberies, I submit, is insufficient  
2 for the case to be moved forward to the jury.

3 The Green Tree counts again are insufficient.  
4 Nothing more than a dispute between shareholders and the  
5 condominium board and indeed if there was some sort of  
6 malfeasance there is nothing to connect Mr. Carneglia to the  
7 board other than the fact that he happened to know Joe  
8 Panzarella. There is nothing to show that he benefited or  
9 took part in the scheme.

10 The government is asking the jury to judge from the  
11 realm of speculation and that is not permissible.

12 MS. SHARKEY: If I can chime in. There was no  
13 evidence of an extortion. Both witnesses who testified for  
14 the government Marrow and Crowley said they were assessed  
15 fees. Crowley concluded his stay at Green Tree with paying a  
16 water bill that was due. He never said that he was in fear.  
17 Marrow simply said that although he paid, I believe, \$32,000,  
18 there was no evidence of any extortion. He never testified  
19 that he was in fear --

20 THE COURT: He was shaking on the witness stand.  
21 These people were terrorized. Their stake in the Green Tree  
22 was put the risk so that they couldn't sell. To people of  
23 modest means that is devastating.

24 MS. SHARKEY: Respectfully, Judge, I don't think  
25 that is what the testimony bore out.

1 THE COURT: I disagree.

2 At least at this stage you can review it when I hear  
3 your case.

4 MR. FARBER: If the Court would accept a blanket  
5 Rule 29 application across the indictment.

6 THE COURT: Racketeering Act Ten we have already  
7 dealt with, have we not?

8 MR. NORRIS: The securities fraud.

9 THE COURT: The original act ten.

10 MR. BURLINGAME: The extortion of the restaurant --

11 THE COURT: Racketeering Act Ten --

12 MR. BURLINGAME: You are talking about the counts  
13 which don't involve the defendant in the original indictment.

14 MS. SHARKEY: Those were dismissed.

15 MR. FARBER: Racketeering Act 18-- wasn't that  
16 Racketeering Act Ten?

17 MR. BURLINGAME: I believe, it was.

18 THE COURT: I have the indictment before me.

19 MR. BURLINGAME: It's the ones where the defendant  
20 is not named.

21 THE COURT: Extortionate involving Vincent  
22 DeCongilio and Vincent Gotti.

23 MR. BURLINGAME: Your Honor dismissed that.

24 THE COURT: Ten is dismissed.

25 MR. FARBER: 16 and 17 as well.



1           THE COURT: As to 16 and 17 they are dismissed. I'm  
2 talking about the individual indictment for lack of proof and  
3 Counts Five and Six of the original indictment --

4           MR. BURLINGAME: If I might, you dealt with these  
5 charges and the record is clear why your Honor got rid of  
6 them. We have introduced sufficient evidence for the counts  
7 to go to the jury, if your Honor was so inclined. We  
8 understand your Honor doesn't think they are relevant to the  
9 case.

10           There has been evidence introduced on the counts, we  
11 put the evidence in for appellate purposes, if your Honor is  
12 going to dismiss the count. We handled it pretrial and we  
13 rely on the record as it is.

14           THE COURT: For the record, I'm dismissing them,  
15 they are out of the case.

16           MR. BURLINGAME: Correct.

17           THE COURT: I'm ruling however that the evidence  
18 that came in on all of those counts would have been  
19 admissible with respect to those counts, which are remaining,  
20 and with respect to the racketeering acts that have remained.

21           MR. BURLINGAME: Thank you. I misunderstood.

22           THE COURT: The dismissal of the racketeering acts  
23 and of the two individual counts, five and six, do not  
24 warrant a new trial in connection with the counts that will  
25 go to the jury.

1           MR. FARBER: I believe, Racketeering Act 18 at this  
2 point in time was either withdrawn by the government or being  
3 dismissed by the Court.

4           THE COURT: What are you doing with respect to that?

5           MR. BURLINGAME: I missed that.

6           MR. FARBER: Racketeering Act 18.

7           MR. BURLINGAME: That, I believe, has been dismissed  
8 as well.

9           THE COURT: It's dismissed now for the record.

10          MR. FARBER: Thank you.

11          THE COURT: Is that record clear now?

12          MR. FARBER: Now it's clear.

13          MR. BURLINGAME: I would like to clarify your Honor  
14 IS dismissing 10, 16 and 17 --

15          THE COURT: And 18.

16          MR. BURLINGAME: Wasn't based on the reasons that  
17 your Honor put on the record when you made that ruling.

18          THE COURT: And Counts Five and Six are being  
19 dismissed for lack of sufficient evidence as previously  
20 stated.

21          MR. BURLINGAME: I believe, Judge, what you  
22 previously ruled was that you didn't think, the Colonel of it  
23 wasn't appropriate for the defendant to be -- for these  
24 counts concerning other individuals for the defendant to be  
25 tried on those.

1           We understand your Honor's position, we included  
2 those counts for -- seeing some potential pitfalls on appeal  
3 and I would ask that the record be clear we did introduce  
4 evidence on those counts and I think there is sufficient  
5 evidence for the count to go to the jury were they to go the  
6 jury.

7           I understand they have been dismissed. I want the  
8 record could be clear they are not being dismissed for  
9 insufficient evidence because there was evidence produced on  
10 those counts, 10, 16 and 17 that deal with the Magnolo  
11 murder.

12           THE COURT: I don't think so.

13           MR. BURLINGAME: We had multiple witnesses testify  
14 to their admissions to the murder, how they took place --

15           THE COURT: There was no doubt the events took  
16 place, but there is no connection between the defendant --

17           MR. BURLINGAME: Correct. We're arguing there is a  
18 connection --

19           THE COURT: There is not enough to go to the jury  
20 connecting the defendant.

21           MR. BURLINGAME: As to this defendant. We did  
22 introduce evidence as to how it's charged against the other  
23 members of the conspiracy.

24           THE COURT: That maybe so.

25           MR. BURLINGAME: Thank you.

1           THE COURT: Some of them were dismissed before  
2 trial. I'm reiterating now for purposes of trial unless the  
3 defendant objects.

4           MS. SHARKEY: No, your Honor.

5           THE COURT: I think for purposes of appeal  
6 clarification what is in and out of the indictment is  
7 desirable as to most of these counts, which I've denied. I  
8 think there is sufficient to go to the jury. However, after  
9 I hear your case I will reconsider.

10          MS. SHARKEY: Thank you.

11          We'll also be filing something on the racketeering  
12 act concerning John Doe Bobby Chiavo prior to the defense  
13 case.

14          THE COURT: I will be happy to read any brief that  
15 you have.

16          MR. BURLINGAME: Just one other matter. I think the  
17 defense originally said their case would be a day to a day  
18 and a half. I wanted to see if that is still the estimate so  
19 that we can possibly revisit the decision as to the  
20 summations.

21          MS. SHARKEY: I think if we start at 9:30 and  
22 depending on the length of the cross-examination we would be  
23 done by close of business tomorrow.

24          THE COURT: I can't see cross-examination. It's  
25 more argument than cross-examination.

1           You are depending primarily, as I understand it, on  
2 these recordings and the one or two statements he is said to  
3 have made saying that I am out of the gang.

4           MS. SHARKEY: Right.

5           THE COURT: Very little on that. It should go very  
6 quickly. I see no reason we shouldn't finish tomorrow and sum  
7 up Wednesday.

8           MR. FARBER: Your Honor less the government is  
9 anticipating a rebuttal case.

10          MR. BURLINGAME: It would depend on what your case  
11 is --

12          THE COURT: Let's leave it open. I'm not going to  
13 press either the government or defendant with respect to  
14 summations to the point where they feel uncomfortable because  
15 they haven't had enough time to prepare. It has been an  
16 exceptionally complex case.

17          From a forensic point of view it's probably the most  
18 complex case we've had in many years in this Court, almost  
19 every aspect of evidence, five murders, more than five  
20 murders actually were referred to. Enormous amount of  
21 information, the necessity of integrating a lot of the  
22 details on timing on these telephone calls, on everything  
23 else and rebutting is going to be terribly difficult. If you  
24 feel you are not ready on Wednesday we won't have summation  
25 on Wednesday, we will go over to Thursday. There is a

1 certain loss of momentum. I prefer to go through.

2 MR. BURLINGAME: I appreciate your Honor recognizing  
3 that. I think it's going to be extraordinary pressed to  
4 be -- we anticipated we'd have a day to try to get things  
5 together.

6 THE COURT: I understand your problem. The case has  
7 been exceptional well tried by both sides and I'm not going  
8 to put you in a position where you have to flounder because  
9 you have not had time to prepare. There may be charts to  
10 prepare and other materials for both sides. If you tell me  
11 tomorrow you want Wednesday off and you want to come back  
12 Thursday for the summations-- can we get all summation in one  
13 day?

14 MR. BURLINGAME: I believe so.

15 MR. FARBER: I would join in that application,  
16 having a day off in between.

17 THE COURT: I don't think that is unreasonable.  
18 I'll be happy to grant it.

19 MR. BURLINGAME: The preliminary ruling is that we  
20 will sum up on Thursday.

21 THE COURT: If that is what you want.

22 MR. BURLINGAME: I think that is what we want.

23 THE COURT: That's what we will do. Then I will  
24 charge. The charge will probably has a couple of hours, I  
25 think, and they can deliberate the rest of Friday and come

1 back Monday.

2 MS. SHARKEY: You're going to charge on Friday.

3 THE COURT: Yes, I think we have to.

4 I think we ought to charge after the summation.

5 MR. FARBER: How long is the charge, do you think?

6 THE COURT: It is roughly one hundred pages and I  
7 read at the rate of about three minutes a page, that's  
8 roughly 300 minutes, that is about four hours.

9 Anything further?

10 MS. SHARKEY: No.

11

12 (Court adjourned to 9:30 a.m. March 3, 2009.)

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